SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, ~~1964~~ 1965

No. ~~652~~ 19

UNITED STEELWORKERS OF AMERICA, AFL-CIO, PETITIONER,

vs.

R. H. BOULIGNY, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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[fol. 1]

APPENDIX TO BRIEF FOR APPELLANT

IN THE SUPERIOR COURT OF MECKLENBURG COUNTY, NORTH CAROLINA

R. H. Bouligny, Inc., a corporation, Plaintiff,

vs.

United Steelworkers of America, AFL-CIO, an unincorporated association, Defendant.

Complaint—Filed May 29, 1963

The plaintiff, complaining of the defendant, says and alleges:

1. That the plaintiff is a North Carolina corporation, having its principal office and place of business in the City of Charlotte, Mecklenburg County, North Carolina.

2. That the defendant, as the plaintiff is informed and believes, is an unincorporated association, conducting in North Carolina the business and purposes for which it is organized.

3. That during the months of April and May, 1963, the defendant has caused to be written, published and delivered to many persons in the City of Charlotte and Mecklenburg County, North Carolina, particularly to the employees of the plaintiff, certain pamphlets and circulars containing statements with respect to the plaintiff which are false and defamatory.

[fol. 2] 4. That such pamphlets and circulars have contained untruthful and false statements, for example: —that the plaintiff has "lied to employees"; that after one, Millard Smith, had recently been discharged from the employment of the plaintiff, a representative of the management of the plaintiff, went to a Company where the said Millard Smith had subsequently found employment and "tried to

get" Millard Smith "fired" from the job which he had thus obtained after being discharged from the employment of the plaintiff; that, on such occasion and for such purpose, the aforesaid representative of the plaintiff presented to "the officials of the Company where Millard Smith had obtained a job" the "work record and progression chart" of Millard Smith "for the time he worked at Bouligny, with the hope that by doing this Millard Smith would be fired" from the job which he had obtained after being discharged from the plaintiff's employment; that the plaintiff's representative "would not only deny Millard Smith a chance to make a decent living for himself, but he has absolutely no feeling for Millard Smith's wife and four children"; that the plaintiff's representative could not "stand the thought of one of his former slaves having a job where he is now making" a rate of pay higher than he formerly made; that this is a "dirty trick" on the part of the representative of plaintiff's management; that "there is no level to which he", as a representative of plaintiff's management, "will not sink"; and that unless they embrace the defendant, the employees of the plaintiff "will always have to live in fear of people like" the representative of the plaintiff's management "doing the same thing" to them and to their "wives and children".

5. That by such false statements the defendant, through its agents and representatives, has intentionally, wilfully and maliciously slandered and libeled the plaintiff and has unlawfully defamed and injured the good name and reputa-[fol. 3] tion of the plaintiff, and has injured the relations between the plaintiff and its employees.

6. That by reason of the matters hereinabove set forth, the plaintiff has been damaged in the sum of One Hundred Thousand ($100,000.00) Dollars and is entitled to judgment against the defendant in that amount.

7. That by reason of the matters hereinabove set forth, the plaintiff is entitled to judgment against the defendant for punitive damages in an additional amount of One Hundred Thousand ($100,000.00) Dollars.

Wherefore, the plaintiff prays the Court for judgment against the defendant in the sum of Two Hundred Thousand ($200,000.00) Dollars, together with the costs of this action; and the plaintiff prays the Court for such other and further relief as to the Court may seem just and proper.

Grier, Parker, Poe & Thompson, Attorneys for the Plaintiff.

North Carolina
Mecklenburg County

Oliver R. Rowe, being first duly sworn, deposes and says that he is an officer of the plaintiff above-named, to wit, its Executive Vice-President; that he knows the contents of the foregoing Complaint and that the same is true to his own knowledge, except as to such matters as are therein stated upon information and belief, and as to these he be-
[fol. 4] lieves the said Complaint to be true.

Oliver R. Rowe

Subscribed and sworn to before me, this the 28 day of May, 1963.

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA, AT CHARLOTTE

No. 9326

R. H. BOULIGNY, INC., a corporation, Plaintiff,

vs.

UNITED STEELWORKERS OF AMERICA, AFL-CIO, an unincorporated association, Defendant.

PETITION FOR REMOVAL

To the Honorable Judge of the United States District Court for the Charlotte Division of the Western District of North Carolina:

Your petitioner, United Steelworkers of America, AFL-CIO, a labor organization, existing under the laws of, and having its principal place of business in the State of Pennsylvania, respectfully shows until this Honorable Court that it is the defendant in the suit which was filed in the Superior Court of Mecklenburg County, North Carolina, on the 29th day of May, 1963, wherein R. H. Bouligny, Inc., a North Carolina corporation having its principal office and place of business in the State of North Carolina is plaintiff, and the petitioner, United Steelworkers of America, AFL-CIO, an unincorporated association, is named as party defendant (a copy of the summons and complaint in said case being attached hereto); that the matter and amount in dispute in said suit exceeds exclusive of costs and interest, the sum of Ten Thousand Dollars ($10,000); that said R. H. Bouligny, Inc., is engaged in interstate and the matters and things complained of in said complaint allegedly arose during a campaign conducted pursuant to the National Labor Relations Act, as amended, and said corporation right to proceed thereon, if any, is provided in, subject to and limited by the provisions set forth in said act; that [fol. 5] the subject matter arises under the laws of the

United States, including but not limited to laws regulating commerce; that purported service was attempted on May 31, 1963, and that the petitioner has not entered an appearance in said case and does not by this petition waive its objections to attempted service of process herein.

Petitioner avers that it was not at the time of the occurrence of the events made the basis of this suit, nor at the present time, nor at any time intervening said dates, a citizen or resident of the State of North Carolina, but during all of said time was, and is now, a citizen of the State of Pennsylvania, where it has its principal place of business; that the plaintiff, R. H. Bouligny, Inc., a corporation, was at the time of the occurrence of the events made the basis of this suit and is at the present time and was at all times intervening said dates, a citizen of the State of North Carolina.

Petitioner prays this Honorable Court to take jurisdiction of this petition and to issue all necessary orders and process in order to remove the hereinabove referred to case from the Superior Court of Mecklenburg County, North Carolina, to the District Court of the United States for the Charlotte Division of the Western District of North Carolina.

United Steelworkers of America, AFL-CIO, By Ledford and Ledford, James B. Ledword, By Cooper, Mitch & Crawford, Its Attorneys of Record.

State of North Carolina
Mecklenburg County

[fol. 6] Before me, the undersigned authority in and for said County and State, personally appeared James B. Ledford, who, being by me first duly sworn, says that he is the attorney for the petitioner in the above petition and is authorized to make this affidavit in its behalf, and that the facts in the foregoing petition are true, as he verily believes.

James B. Ledford.

Sworn to and subscribed before me this 18th day of June, 1963.

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA, AT CHARLOTTE

MOTION TO REMAND—Filed July 3, 1963

Now Comes plaintiff and moves this court to remand this cause to the Superior Court of Mecklenburg County, North Carolina, from which Court it was attempted to be removed to this Court, for the following reasons and grounds:

1. No federal question is presented by this cause.

2. There is no diversity of citizenship and consequently no diversity jurisdiction by reason of the fact that the defendant is an unincorporated association and has members who are citizens of the State of North Carolina and Mecklenburg County and who are domiciled and reside therein.

3. For other reasons apparent upon the face of the record.

Wherefore, plaintiff prays that this cause may be remanded to the Superior Court of Mecklenburg County, [fol. 7] North Carolina, to be there proceeded with according to the practice governing such cases.

Date the 3rd day of July, 1963.

Grier, Parker, Poe & Thompson, By Joseph W. Grier, Jr., Attorneys for Plaintiff, Gaston H. Gage, Attorney for Plaintiff, 400 Law Building, Charlotte, North Carolina.

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA, AT CHARLOTTE

MEMORANDUM OPINION—November 12, 1963

CRAVEN, Chief Judge:

On plaintiffs' motion to remand the above-captioned cases, the Court finds the ultimate facts to be that members of the defendant unincorporated association are citizens of North Carolina and that the defendant union is a juridical person as fully and completely as if it were organized as a corporation, having as great unity of action and as much power centered in the governing officers, and that its principal office and place of business is in Pittsburgh, Pennsylvania. See: *American Federation of Musicians* v. *Stein*, 213 F.2d 679 (6th Cir. 1954). There is a trend to treat unincorporated associations in the same manner as corporations and to treat them as citizens of the state wherein the principal office is located for jurisdictional purposes. But, the greater [fol. 8] number of cases still hold that even in cases in which labor unions may sue or be sued by association name they have no juridical person citizenship for purposes of diversity jurisdiction. Barron & Holtzoff, *Federal Practice & Procedure*, Section 569. Neither the Supreme Court nor the Court of Appeals for the Fourth Circuit has ever ruled specifically upon the question. See: *Textile Workers Union of America* v. *Cone Mills, Corp.*, 268 F. 2d 920 (4th Cir. 1959).

The approach and rationale of the *Stein* case is extremely persuasive. There appears to be no common sense reason for treating an unincorporated national labor union differently from a corporation. See: 66 Yale L.J. 742.

I am caught on the horns of a dilemma. To remand is to adopt the poorer reasoned but more firmly established rule. To retain jurisdiction may result in several days wasted trial time ending in ultimate dismissal for failure of jurisdiction.

An order remanding a case to the state court from which it was removed is not reviewable on appeal. 28 U.S.C.A. Section 1447(d); Barron & Holtzoff, *Federal Practice &*

Procedure, Section 109. See: *Santa Margarita Mutual Water Co.* v. *State Water Rights Board of the State of California,* 165 F. Supp. 870, 879, for an interesting attempt to secure appellate review.

Retention of jurisdiction *is* appealable, and may be reviewed in the Court of Appeals for the Fourth Circuit. On my own motion, I certify that I am of the opinion that the order I am about to sign denying the motion to remand involves a controlling question of law as to which there is substantial ground for difference of opinion, and I am further of the opinion that an immediate appeal from this order would materially advance the ultimate determination of the [fol. 9] litigation, and would avoid an inherent risk of several days wasted trial time, and be in the interest of justice. Further proceedings in the district court are stayed to permit appeal to be taken from the order dismissing the motion to remand, the application for such review to be made within ten days after the date of the order denying remand. 28 U.S.C.A. Section 1292(b).

Counsel may submit an appropriate order.

This 12th day of November, 1963.

J. B. Craven, Jr., Chief Judge, United States District Court for the Western District of North Carolina.

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA, AT CHARLOTTE

ORDER DENYING MOTION TO REMAND—January 9, 1964

This Cause coming on for hearing on plaintiff's motion to remand and the same having been duly considered and pursuant to the memorandum opinion filed in this action on the 13th day of November, 1963, and on the basis of the facts found therein and admitted in the pleadings, the Court concludes as a matter of law that the defendant unincorporated association is a juridical person with residence in the State of Pennsylvania for the purpose of determining the jurisdiction of the Federal Court under 28 U.S.C. 1332.

Upon the foregoing findings and conclusions it is ordered that the plaintiff's motion to remand be denied.

The Court upon its own motion and pursuant to the provisions of 28 U.S.C. 1292 (b) certifies that denial of plain-
[fol. 10] tiff's motion to remand involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from this order would materially advance the ultimate determination of the litigation and would avoid an inherent risk of several days wasted trial time and would be in the interest of justice and further orders that proceedings in this Court are stayed to permit this application for such review to be made within ten (10) days after the date of this order.

Done this 9th day of January, 1964.

J. B. Craven, Jr., United States District Judge.

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA, AT CHARLOTTE

AFFIDAVIT

N. F. White, Jr., being first duly sworn, deposes and says:

That he is an officer of the plaintiff in the captioned action; that the defendant in captioned action is an unincorporated association which has members who are citizens of the State of North Carolina and which has for a number of years and is now doing business in this State by performing a great number of the acts for which it was formed within Mecklenburg County, North Carolina; that the defendant has unionized Republic Steel Corporation in Mecklenburg County and that corporation has many employees who are members of the defendant association and the defendant association customarily represents those employees in all manner of dealings and negotiations with the management of Republic Steel Corporation in Mecklenburg County; that the defendant association prior to the filing of the captioned lawsuit attempted to organize the
[fol. 11] plant of R. H. Bouligny, Inc. in Mecklenburg County and in that plant conducted an active campaign to

solicit the votes of the said employees for the Union in an election to determine whether the defendant association would represent the employees of R. H. Bouligny, Inc. in negotiations and dealings with the management of that company; that the defendant association has a member and representative named Joe Kirk, who is a citizen and resident of the State of North Carolina and who has dealt with R. H. Bouligny, Inc. in performing the acts for which the defendant association was formed and who had solicited the votes of the employees of R. H. Bouligny, Inc. in an active and lengthy campaign in order to get the said employees to appoint the defendant association as its agent in bargaining and dealing with the management of R. H. Bouligny, Inc.

This ..... day of July, 1963.

N. F. White, Jr.

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA, AT CHARLOTTE

NOTICE FOR REMOVAL

To: R. H. Bouligny, Inc., a corporation, Plaintiff, or Grier, Parker, Poe & Thompson, Attorneys of Record for Plaintiff.

Notice is hereby given that United Steelworkers of America, AFL-CIO, an unincorporated association, will forthwith file in the District Court of the United States for [fol. 12] the Charlotte Division of the Western District of North Carolina its petition, a copy of which is hereto attached, together with a copy of the bond referred to therein for the removal of this cause to the District Court of the United States for the Charlotte Division of the Western District of North Carolina.

United Steelworkers of America, AFL-CIO, By Ledford & Ledford, James B. Ledford, By Cooper, Mitch & Crawford, Its Attorneys.

(Certificate omitted.)

[fol. 21] [File endorsement omitted]

IN THE UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 9326

R. H. BOULIGNY, INC., a corporation,

vs.

UNITED STEELWORKERS OF AMERICA, AFL-CIO, an unincorporated association.

On Application for Permission to Take an Appeal under section 1292(b) of Title 28, United States Code, from an interlocutory order.

ORDER ALLOWING APPEAL FROM AN INTERLOCUTORY ORDER, ETC.—January 24, 1964

The United States District Court for the Western District of North Carolina having certified by its order of January 9, 1964, that the denial of plaintiff's motion to remand involves a controlling question of law as to which there is substantial ground for difference of an opinion and that an immediate appeal would materially advance the ultimate determination of the litigation; and R. H. Bouligny, Inc., plaintiff, having applied to this court for permission, in accordance with Section 1292(b) of Title 28, U. S. Code, to take an appeal from said order of January 9, 1964, and copies of said application having on January 15, 1964, been delivered to Ledford & Ledford, Esquires, attorneys for United Steelworkers of America, AFL-CIO, an unincorporated association, and an answer as permitted by Rule 35 of this court having been filed,

[fol. 22] On consideration whereof, it is ordered by this court that permission be, and it is hereby, granted to take an interlocutory appeal from said order of January 9, 1964,

of the United States District Court for the Western District of North Carolina.

January 24, 1964.

Simon E. Sobeloff, Chief Judge, Fourth Circuit; Clement F. Haynsworth, United States Circuit Judge, Herbert S. Boreman, United States Circuit Judge.

[fol. 33]

IN THE UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 9326

R. H. BOULIGNY, INC., Appellant,

versus

UNITED STEELWORKERS OF AMERICA, AFL-CIO, an unincorporated association, Appellee.

Appeal from the United States District Court for the Western District of North Carolina, at Charlotte.

J. Braxton Craven, Jr., District Judge.

Argued April 28, 1964. Decided August 6, 1964.

Before Sobeloff, Chief Judge, and Boreman and J. Spencer Bell, Circuit Judges.

Gaston H. Gage and Joseph W. Grier, Jr. (Grier, Parker, Poe & Thompson on brief), for Appellant, and Michael H. Gottesman (David E. Feller, Elliot Bredhoff, Jerry D. Anker, James Ledford, and Cooper, Mitch & Crawford on brief) for Appellee.

OPINION—Filed and Entered August 6, 1964

[fol. 34] J. SPENCER BELL, Circuit Judge:

This is an appeal from an order of the district court denying a motion to remand the case to the state court. The district court has certified the appeal under 28 U.S.C.A. §1292(b)(1958). We exercised our discretion to permit the appeal.

The plaintiff, a North Carolina corporation, brought suit for libel growing out of an organizational campaign in the state court against the defendant, United Steelworkers of America, an unincorporated labor union having its headquarters and principal place of business at Pittsburgh, Pennsylvania. The defendant removed the case to the district court on the grounds both of diversity of citizenship and that the subject matter of the action arises under the laws of the United States. Plaintiff moved to remand the case to the state court. In contesting plaintiffs motion the defendant contended that it is a citizen of Pennsylvania with its principal place of business in that state, conceding, however, that certain of its members are citizens of North Carolina. The district court found the defendant to be "a juridical person as fully and completely as if it were organized as a corporation . . . and that its principal office and place of business is in Pittsburgh, Pennsylvania." It thereupon entered an order denying the motion to remand and certified an appeal to this court. We conclude that the order of the district court must be reversed with instructions to grant the motion to remand.

We discuss first the question of diversity of jurisdiction. In *Bank of the United States* v. *Deveaux,* 9 U.S. (5 Cranch) 37 (1809), Chief Justice Marshall laid down the principle that a corporation is " . . . a mere creature of the law, [fol. 35] invisible, intangible and incorporeal" which for purposes of diversity jurisdiction could not be treated as a citizen, notwithstanding the fact that the corporation could sue and be sued in its own name. In 1844, the court departed from this doctrine in the case of *Louisville, C. & C.R.R.* v. *Letson,* 43 (2 Howard) 497 (1844), holding a

corporation to be "deemed" a citizen of the chartering state. Pressure from the dissenters eventually forced the Court to return to Marshall's concept in *Marshall* v. *Baltimore and Ohio R.R.*, 57 U.S. (16 Howard) 334 (1853), where it held that a corporation was not a citizen but an artificial being and that the citizenship of its stockholders must control. However, the court achieved the same end result as in *Letson* (diversity jurisdiction) by creating a conclusive presumption that all of the stockholders were citizens of the chartering state. This doctrine remained unchanged until 1958 when 28 U.S.C.A. § 1332 was amended by adding section (c). WRIGHT, FEDERAL COURTS 76 (1963). The doctrine has been criticized as an unjustifiable expansion of federal jurisdiction by means of a fiction; nevertheless, unincorporated associations have sought unsuccessfully to bring themselves within the rule.

In *Chapman* v. *Barney*, 129 U.S. 677 (1889), the Supreme Court laid down the rule with respect to unincorporated associations. It held that, for purposes of diversity jurisdiction, the actual citizenship of each of the members of an unincorporated association (in that case a joint stock company) is controlling. In *Great Southern Fireproof Hotel Co.* v. *Jones*, 177 U.S. 449, 454-55 (1900), the Court reaffirmed its holding:

> "This court does not hold that either a voluntary association of persons, or an association into a body [fol. 36] politic created by law, is a citizen of a State within the meaning of the Constitution.
>
> . . . .
>
> "But the express company cannot be a *citizen* of New York, within the meaning of the statutes regulating jurisdiction, unless it be a corporation."

The Court, referring to the rule with respect to corporations, made it clear that the rule was not to be extended:

> "That a limited partnership association created under the Pennsylvania Statute may be described as a '*quasi* corporation,' having some of the characteristics of a

> corporation, or as a 'new artificial person,' is not a sufficient reason for regarding it as a corporation within the jurisdictional rule heretofore adverted to. *That rule must not be extended. We are unwilling to extend it so as to embrace partnership associations.*" (Emphasis added.) 177 U.S. at 457.

We find no subsequent decision of the Court which would justify us in concluding that the rule has been extended. The Court did not do so in *United Mine Workers* v. *Coronado Coal Co.*, 259 U.S. 344 (1922). In that case the Coronado Coal Company brought suit against the international and district and local unions of the United Mine Workers for damages under Section 7 of the Sherman Anti-Trust Act for conspiracy to restrain interstate commerce and to damage plaintiff's property. The unions moved to dismiss on the ground that as unincorporated associations they were not subject to suit. Since there was federal ques-[fol. 37] tion jurisdiction, the diversity of citizenship issue was not involved. In an extended discussion the Court held that unions were suable as such but the Court was careful to limit the application of the rule it was laying down.

> "Though such a conclusion as to the suability of trades unions is of primary importance in the working out of justice and in protecting individuals and society from possibility of oppression and injury in their lawful rights from the existence of such powerful entities as trade unions, *it is after all in essence and principle merely a procedural matter.* As a matter of substantive law, all the members of the union engaged in a combination doing unlawful injury are liable to suit and recovery. . . ." (Emphasis added.) 259 U.S. at 390.

We now come to the case which purportedly has furnished the principal support for those who contend that the rule has been weakened. We think that the case furnishes no support whatsoever for such a position. In *Puerto Rico* v. *Russell & Co.*, 288 U.S. 476 (1933), the petitioner, People

of Puerto Rico[1] brought suit in the insular court of Puerto Rico again Russell & Co. to collect a Puerto Rican tax assessment. Russell & Co. was an unincorporated association organized under Puerto Rican law as a *Sociedad en Comandita* (S. en C.). In the tradition of the civil law a *Sociedad en Comandita* has many of the characteristics [fol. 38] which both corporations and limited partnerships have under the common law although those of the former predominate. The individual members of the *Sociedad* were not named as parties. They appeared specially and removed the case to the United States District Court for the District of Puerto Rico. The Supreme Court reversed and directed the district court to remand the case to the Puerto Rican insular court. The petition to remove and the decision of the Court were expressly based upon sections 41 and 42 of the Organic Act of Puerto Rico, now 48 U.S.C.A. §§863, 864 (1948). Section 41 provided that in addition to the jurisdiction possessed by the United States District Courts generally, the United States District Court for the District of Puerto Rico should have additionally jurisdiction of "all controversies where all of the parties on either side of the controversy are citizens or subjects of a foreign State or States, or citizens of a State, Territory, or District of the United States *not domiciled in Puerto Rico*. . . ."[2] (Emphasis added.) Section 42 provided for removal of any case in which the court had original jurisdiction under Section 41. Although in view of the character of the plaintiff, the suit could on no theory be entertained as a diversity

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[1] The fact that the plaintiff was the Puerto Rican Government was itself enough to warn the reader that the case could not involve constitutional diversity jurisdiction. A state, or territory, or political unit cannot be a citizen in that sense. *Postal Tel. Cable* v. *Alabama*, 155 U.S. 482, 487 (1894).

[2] It is obvious that this statute would not be constitutional as applied to an Article III district court. It was valid as enacted because the district court of Puerto Rico was a territorial court created by virtue of the power conferred on the Congress by Article IV §3 to make all needful rules and regulations respecting the territory belonging to the United States. *Balzac* v. *People of Porto Rico*, 258 U.S. 298 (1922); *Porto Rico Ry., Light & Power Co.* v. *Colom*, 106 F. 2d 345 (1 Cir.), *cert. denied*, 308 U.S. 617 (1939).

suit by an Article III court, the Supreme Court said that "admittedly, if the individual members of the *Sociedad* are 'parties' within the meaning of the Organic Act . . . the [fol. 39] suit is one within the jurisdiction of the District Court because of their non-residence, *diversity of citizenship* being unnecessary." 228 U.S. at 478. (Emphasis added.) Thus the question before the Court was simply one of the interpretation of the statute—not a question of constitutional diversity jurisdiction. The Court by analogy to a common law corporation held that the defendant, a civil law *Sociedad* had a domicil in Puerto Rico and thus could not claim the domicil of its individual members to acquire the non-resident status required by the Organic Act. Clearly the case does not by any stretch of the imagination hold that the *Sociedad* was a citizen of Puerto Rico for purposes of diversity jurisdiction under Article III. Nor can the Court's analogy between the civil law *Sociedad* and the common law corporation justify a contention that it was consciously expanding federal diversity jurisdiction.

American Federation of Musicians v. *Stein*, 213 F.2d 679 (6 Cir.), *cert. denied*, 348 U.S. 873 (1954), since it rested upon *Puerto Rico* v. *Russell & Co.*, *supra*, can furnish no support for defendant's contention. Furthermore, although it expressed sympathy with the argument, the case did not hold that a labor union was a citizen for diversity purposes. It merely held that the district court was justified in issuing a temporary injunction until the issue could be fully studied. It is interesting to note that the district court, when it did reach the issue, rejected the contention. *Stein* v. *American Federation of Musicians*, 183 F.Supp. 99 (M.D. Tenn. 1960). After reviewing the cases, the court reached the conclusion that the courts were following the rule that in cases where federal jurisdiction was based on diversity grounds "citizenship of an unincorporated association, including labor unions, is determined [fol. 40] by the citizenship of its individual members." 183 F.Supp. at 100.[3]

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[3] The rationale of *Van Sant* v. *American Express Co.*, 169 F.2d 355 (3 Cir. 1947), which found diversity, appears to be that since a New York joint stock association is treated by the New York

Whatever basis there once was for the belief that *Russell* intended to lay down new principles for the determination of citizenship for diversity jurisdiction purposes, it was reversed by the passage of the 1958 amendment to the diversity statute. Prior to the 1958 amendment which added subparagraph (c) to 28 U.S.C. § 1332 the argument that the courts could substantially equate unincorporated associations with corporations by a minor feat of interpretation was easy to make. The statute spoke only of citizens; the question was whether an unincorporated association should be treated as a citizen—a question merely of interpretation—and the court could resolve it by application of the same kind of presumption that had served in the case of corporations. The 1958 amendment, however, did two things that upset the argument: (1) For the first time, it referred specifically to corporations, providing that they shall be "deemed" citizens. The old presumption that all the stockholders are citizens of the state of incorporation has been abandoned; it is now no necessary part of the argument for attributing citizenship to these [fol. 41] entities. Corporations are treated as citizens because the Act of Congress directs that they be so treated. (2) For many corporations the statute now provides dual citizenship: a corporation is to be treated as a citizen of any state by which it is incorporated, and also of the state in which it maintains its principal place of business. This is, in the first place, confirmation of the fact that the fiction as to the citizenship of the stockholders has been abandoned.

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courts "for all practical purposes" as a corporation it does not fall within the rule of *Chapman* v. *Barney*. The court lays stress on the fact that the issue was not raised by the defendant until rehearing on appeal. The court also cites Prof. Moore's comment on *Puerto Rico* v. *Russell & Co.*, 288 U.S. 476, at 2 MOORE'S FEDERAL PRACTICE, 2100, to the effect that the Chapman rule is itself beginning to show signs of being outmoded. Cf. 33 COLUM. L. REV. 540 (1933). We have rejected this interpretation of *Russell*.

In *Mason* v. *American Express Co.*, 33 L.W. 2016 (2 Cir. decided 7/2/64) the Second Circuit was persuaded by the language of *Russell* to extend citizenship to a New York joint stock association for diversity purposes. We must respectfully disagree with that opinion.

It is hardly reasonable to presume that all the stockholders are domiciled in each of two separate states. But the principal point is that, even laying aside the matter of multiple incorporation, unincorporated associations cannot be equated with corporations by a simple judicial decision attributing citizenship to them. They are incapable of dual citizenship, and hence would be treated more favorably than corporations for diversity purposes.

Such associations, if treated as citizens, would also be treated more favorably than corporations in the matter of venue. A corporation may be sued in any district in which it is incorporated, or licensed to do business, or is doing business. 28 U.S.C. §1391(c) (1958). By no stretch of the process of interpretation can this section be read as applying to an unincorporated association. Hence such an association, if treated as a citizen for diversity purposes, would probably be held to be a resident of the district in which its principal office is located, making that district the only proper venue other than the district of the plaintiff's residence.

The Reporters for the American Law Institute's Study of the Division of Jurisdiction between State and Federal Courts are proposing that unincorporated associations be treated as citizens (of the state where the principal place of business is located) for purposes of diversity jurisdic-[fol. 42] tion. See Tent. Draft No. 2, §1301 (b)(2) (1964). This indicates that there is informed sentiment in favor of such a development. *Cf.* Comment, *Unions as Juridical Persons,* 66 YALE L.J. 712 (1957). The proposal, however, is that the change be brought about by an Act of Congress amending the Judicial Code—not by judicial interpretation. The fact that such a change is proposed recognizes the propriety of addressing such a proposal to Congress.[4] It also recognizes the fact that under existing law unincorporated associations cannot be treated as citizens; indeed, in the Commentary (*id.,* p. 61), the law existing to this

[4] We readily concede that vis-a-vis a corporation it would be quite feasible to treat a modern labor union as a citizen for diversity purposes. But the question of policy is certainly not one for decision of an intermediate appellate court.

effect is expressly recognized, though it is said there have been some "inroads" on the rule in recent years.

Having found no diversity, we also think that no federal question jurisdiction exists. The National Labor Relations Act is concerned only with the coercive effect of an alleged libel and not with its character as a common law tort. *Radio Corporation of America,* 106 NLRB No. 251 (1953). In accordance with the doctrine announced in *Erie R.R.* v. *Tompkins,* 304 U.S. 64 (1938), federal courts uniformly have held that libel and slander actions are to be governed by the substantive law of the state in which the torts allegedly occur. *Schenectady Union Publishing Co.* v. *Sweeney,* 122 F.2d 288 (2 Cir. 1941), *aff'd per curiam,* 316 U.S. 642 (1942). Since the National Labor Relations Act is not concerned with libel as a common law tort and the offense is specifically within the aegis of the substantive state law, we find no federal question.

Reversed.

[fol. 44] [File endorsement omitted]

IN THE UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 9326

R. H. BOULIGNY, INC., Appellant,

vs.

UNITED STEELWORKERS OF AMERICA, AFL-CIO, an unincorporated association, Appellee.

Appeal From the United States District Court for the Western District of North Carolina.

JUDGMENT—Filed and Entered August 6, 1964

This Cause came on to be heard on the record from the United States District Court for the Western District of North Carolina, and was argued by counsel.

On Consideration Whereof, It is now here ordered and adjudged by this Court that the order of the said District Court appealed from, in this cause, be, and the same is hereby, reversed with costs; and that this cause be, and the same is hereby, remanded to the United States District Court for the Western District of North Carolina, at Charlotte, for further proceedings not inconsistent with the opinion of the Court filed herein.

Simon E. Sobeloff, Chief Judge, Fourth Circuit; H. S. Boreman, United States Circuit Judge, J. Spencer Bell, United States Circuit Judge.

[fol. 56] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 57]

SUPREME COURT OF THE UNITED STATES

No. 652, October Term, 1964

UNITED STEELWORKERS OF AMERICA, AFL-CIO, Petitioner,

vs.

R. H. BOULIGNY, INC.

ORDER ALLOWING CERTIORARI—January 18, 1965

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Goldberg took no part in the consideration or decision of this petition.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No.

UNITED STEELWORKERS OF AMERICA, AFL-CIO
Petitioner.

v.

R. H. BOULIGNY, INC.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit entered in this case on August 6, 1964.

OPINIONS BELOW

The opinion of the district court, which is unreported, is reproduced in the Appendix to this petition. The opinion of the Court of Appeals is reported at 336 F. 2d 160, and is reproduced in the Appendix to this petition.

JURISDICTION

The judgment of the Court of Appeals was entered on August 6, 1964, and is reproduced in the Appendix to this petition. This Court has jurisdiction to review the judgment herein by writ of certiorari under 28 U. S. C. §1254(1).

QUESTION PRESENTED

Whether the modern-day labor union—treated as a legal entity for virtually every other purpose—is to be treated as a legal entity with its own citizenship for purposes of the diversity jurisdiction of the federal courts?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article III, Section 2 of the Constitution of the United States provides, in pertinent part:

> "The judicial Power shall extend . . . to Controversies . . . between Citizens of different States. . ."

28 U. S. C. §1332 provides, in pertinent part:

> "(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and is between——
>
> "(1) citizens of different States;
>
> * * *
>
> "(c) For the purposes of this section and section 1441 of this title, a corporation shall be deemed a citizen of any State by which it has been incorporated and of the State where it has its principal place of business."

28 U. S. C. §1441(a) provides:

> "Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending."

STATEMENT OF THE CASE

On May 29, 1963, Respondent, R. H. Bouligny Inc. ("the Company"), sued Petitioner, United Steelworkers of America ("the Union"), an unincorporated labor union, in the Superior Court of Mecklenburg County, North Carolina, alleging that it had been libelled in a leaflet published by the Union. The complaint prayed for $100,000 compensatory damages and an additional $100,000 punitive damages (R. App. 1-3).[1]

On June 18, 1963, the Union removed the case to the United States District Court for the Western District of North Carolina, pursuant to 28 U. S. C. §1441(a). The removal petition recited that the Company is a North Carolina citizen (being incorporated and having its principal place of business in that State), that the Union is a Pennsylvania citizen (having its headquarters and principal place of business in that State), and that accordingly the District Court had jurisdiction on the basis of diversity of citizenship between the parties (R. App. 4-5).

The Company moved to remand, on the ground that the Union "is an unincorporated association and has members who are citizens of North Carolina," and that consequently "there is no diversity of citizenship" (R. App. 6).

The District Court's Opinion

The district court refused to remand. It found that the Union has members who are citizens of North Carolina, but "that the defendant union is a juridical person as fully and completely as if it were organized as a corporation, having as great unity of action and as much power centered in the governing officers, and that its principal office and

[1] The transcript of record contains the Appendix used in the court below and the proceedings in the court below, paginated separately. To avoid confusion, we refer to the pages in the Appendix below as "R. App.", and to all other portions of the record as "R."

place of business is in Pittsburgh, Pennsylvania" (*Appendix 1-2*).[2]

The court chose to follow what it described as "a trend to treat unincorporated associations in the same manner as corporations and to treat them as citizens of the state wherein the principal office is located for jurisdictional purposes." It stated that "there appears to be no common sense reason for treating an unincorporated labor union differently from a corporation." While acknowledging that "the greater number of cases still hold" that diversity is lacking if a labor union has a member whose citizenship is not diverse from that of the other party, the court described those cases as "poorer reasoned" than the trend which it was following. (*Appendix 2*).

The Court of Appeals' Opinion

The Company obtained interlocutory review pursuant to 28 U. S. C. §1292(b). (R. 21-22). The Court of Appeals reversed. It recited, and did not disturb, the district court's finding that the Union is "a juridical person as fully and completely as if it were organized as a corporation . . . and that its principal office and place of business is in Pittsburgh, Pennsylvania." (*Appendix 5*). It concluded, however, that no matter how complete an unincorporated association's legal personality, the citizenship of each of its members is controlling for diversity purposes.

This result, the court said, was dictated by the Supreme Court's opinions in *Chapman* v. *Barney*, 129 U. S. 677 (1889) and *Great Southern Fireproof Hotel Co.* v. *Jones*, 177 U. S. 449 (1900) stating that the rule attributing "citizenship" to corporations "must not be extended" to any other type of collective association. (*Appendix 7-6*).

The Union argued below that the rigid rule of these early cases had been modified by the subsequent decision in

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[2] Pages denominated "*Appendix*" are those of the appendix to this petition.

Puerto Rico v. *Russell & Co.*, 288 U. S. 476 (1933), holding an unincorporated *Sociedad en Comandita* to have a citizenship distinct from that of its members. The court below held, however, that *Russell* "furnishes no support whatsoever for such a position," because *Russell* interpreted the word "citizen" as it appears in the Organic Act, now 48 U. S. C. §§ 863, 864, and not as it appears in the diversity statute. The court found nothing in *Russell* to indicate that this Court "was consciously expanding federal diversity jurisdiction." (*Appendix* 7-9).

The court acknowledged, however, that its reading of *Russell* is in direct conflict with that of three other circuits:

> "*American Federation of Musicians* v. *Stein*, 213 F. 2d 679 (6 Cir.), *cert. denied*, 348 U. S. 873 (1954), since it rested upon *Puerto Rico* v. *Russell & Co.*, supra, can furnish no support for defendant's contention. . . .
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> * * *
>
> "The rationale of *Van Sant* v. *American Express Co.*, 169 F. 2d 355 (3 Cir. 1947), which found diversity, appears to be that since a New York joint stock association is treated 'for all practical purposes' as a corporation it does not fall within the rule of *Chapman* v. *Barney* . . . The court also cites Prof. Moore's comment on *Puerto Rico* v. *Russell & Co.*, 288 U. S. 476, at 2 MOORE'S FEDERAL PRACTICE, 2100, to the effect that the Chapman rule is beginning to show signs of being outmoded. Cf. 33 COLUM. L. REV. 540 (1933). We have rejected this interpretation of *Russell*.
>
> "In *Mason* v. *American Express Co.*, 33 L. W. 2016 (2 Cir. decided 7/2/64) the Second Circuit was persuaded by the language of *Russell* to extend citizenship to a New York joint stock association for diversity purposes. We must respectfully disagree with that opinion." (*Appendix 9, 10*, n. 3).

The court next stated that, "whatever basis there once was for the belief that *Russell* intended to lay down new principles for the determination of citizenship for diversity jurisdiction purposes, it was reversed by the passage of the 1958 amendment to the diversity statute" assigning dual citizenship to corporations. This resulted, the court said, for two reasons: first, since Congress had now specifically defined the citizenship of one type of artificial body—the corporation—the courts should no longer undertake to define the citizenship of other types; and second, labor unions "would be treated more favorably than corporations for diversity purposes" if they were assigned a single citizenship, for corporations now have two. (*Appendix 10-11*).

The court "readily concede[d] that vis-a-vis a corporation it would be quite feasible to treat a modern labor union as a citizen for diversity purposes. But the question of policy is certainly not one for decision of an intermediate appellate court." (*Appendix 12*, n. 4).

REASONS FOR GRANTING THE WRIT

> "For almost a century, in ascertaining whether there is the requisite diversity of citizenship to confer jurisdiction on the federal courts, we have looked to the domicil of a corporation, not that of its individual stockholders, as controlling." *Puerto Rico* v. *Russell & Co.*, 288 U. S. 476, 479 (1933).

1. The question presented in this case is whether a labor union which is a "juridical person as fully and completely as if it were organized as a corporation" (*Appendix 1, 5*) is to be treated similarly to a corporation for diversity purposes.

The court below has held that a labor union, unlike a corporation, may not remove an action to federal court on the ground of diversity of citizenship if it has a single member who is a citizen of the same state as the opposing party. Since most unions, like petitioner, have at least a few members in each of the fifty states, the decision below effectively

bars them from ever removing cases to federal court on diversity grounds.

This result undermines the very purpose for which the diversity jurisdiction was created—avoidance of local prejudice. As Alexander Hamilton explained in Federalist No. 80, the federal courts are "the proper tribunals for the determination of controversies between different states and their citizens," for in such cases "the state tribunals cannot be supposed to be impartial." Fear of local prejudice survives today as the principal justification for preservation of the diversity jurisdiction. Thus, in 1951, the Committee on Jurisdiction and Venue of the Judicial Conference, opposing suggestions that diversity jurisdiction be abolished, explained:

> "The question involved is not a theoretical one, but one of great practical significance. To deny the right to resort to the Federal courts means that in controversies between citizens of different states, one must seek justice in the courts of the State of his adversary where he will find, in many of the States, that trial by jury has been stripped of many of its safeguards and the judge has been denied the common-law powers necessary to the proper administration of justice. . . . To require a nonresident to try his case in such a tribunal is not only to turn him over to the tender mercies of a local jury, without power in the presiding judge to counteract the appeals to prejudice of local counsel, it is also to deny to him the sort of trial by jury which as a citizen of the United States he is entitled to have in the Federal courts . . .
>
> ". . . [T]here is a great bulk of expert opinion from those who litigate in the courts that local prejudice continues to exist, and that the Federal courts are in truth a strong protection against it."[8]

[8] Attached to S. Rep. No. 1830, 85th Cong. 2d Sess. (1958), and printed in 1958 U. S. Code Congressional and Administrative News, 3114 at 3116-17.

There have been suggestions by some commentators—though rejected by Congress and the Judicial Conference—that corporations no longer suffer local prejudice. But surely no similar claim can be made about labor unions. The labor movement, from its birth, has had predominantly a regional development. Its strength, its support, and its acceptance have come mainly from the heavily industrial states. Elsewhere, labor unions are still regarded as "foreigners," and when they venture into these areas in attempts to organize employees, they encounter widespread community hostility. A not atypical situation was described by the NLRB recently, in *Utica-Herbrand Tool Div.*, 145 NLRB No. 165, 55 LRRM 1223 (1964). A union's organizing attempt was opposed not only by the employer, but by the mayor, policemen, state legislators, the newspaper, the radio station and citizens' committees. The union representatives were called "outside agitators." Employees were warned that unions had made "distress areas" of other parts of the country, and that other companies would relocate in the area only "if we keep the climate right." [4] Small wonder that labor unions fear local prejudice in such areas, and seek to remove their lawsuits to the federal courts!

The need for an impartial forum is particularly acute because much "non-federal" litigation against labor unions

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[4] For other typical examples, see *Bibb Mfg. Co.*, 82 NLRB 338, 355-62 (1949); *James Lee and Sons Co.*, 130 NLRB 290 (1961); Comment, *Unions as Juridical Persons*, 66 Yale L.J. 712, 744-45 (1957) and references cited in nn. 189, 190.

For a demonstration of how community prejudice can affect the quality of justice received by labor unions in state courts, see *State Court Injunctions*, Report of the Subcommittee on Labor and Public Welfare, S. Doc. No. 7, 82d Cong., 1st Sess. (mislabeled 81st Cong. 2d Sess.) 6-12, 92-118 (1951) (finding a prevalence in the southeast of "abuse of injunctions" against labor unions). This report is summarized and discussed in Comment, *Unions as Juridical Persons*, 66 Yale L.J. 712, 745 and n. 191. See also Petition for Certiorari in *Walker* v. *State of North Carolina*, October Term, 1960, No. 110 (certiorari denied, 364 U. S. 832).

involves highly inflammatory issues—allegations of picket line violence, defamation, or other tortious conduct.[5] Typically, when a union attempts to organize in a generally unorganized section of the country, community emotions will be raised to fever pitch. Many tort actions against unions commence precisely in those circumstances. The complaint will ask huge sums in actual damages, together with enormous punitive damages. The union, far from home and virtually friendless, will, in the words of the Judicial Conference, be "turn[ed] . . . over to the tender mercies of a local jury, without power in the presiding judge to counteract the appeals to prejudice of local counsel."

To characterize the union in these circumstances as a "citizen" of the forum state, simply because it has a few members there, is to indulge the cruelest of fictions. Here, for example, Respondent, a prominent local corporation, has sued the petitioner union for $100,000 actual and $100,000 punitive damages. It can be anticipated that a local jury will realize that any verdict it renders will be paid not by the union's handful of local members, but from its general treasury in Pittsburgh. This temptation to assist a local citizen at the expense of the distant treasury of an unpopular defendant constitutes the very local prejudice which the removal procedure is designed to mitigate or prevent.

Petitioner's plight in this case is one which is recurring with increasing frequency. The "six-figure" damage suit has become a popular weapon to scare off union organizing attempts in unorganized areas. There are at least seven other libel suits against labor unions, each seeking astronomical damages, now pending on removal in the district courts of the Fourth Circuit alone. In each, the union removed

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[5] Contract actions presumably are removable on "federal question" grounds by virtue of §301 of the Labor Management Relations Act, 29 U. S. C. §185, and most suits involving internal union affairs are now brought under the Labor Management Reporting and Disclosure Act of 1959, 29 U.S.C. § 401 *et seq.*

the case to federal court on the ground of diversity of citizenship, and in each a motion to remand is being held in abeyance pending final disposition of the present case.[6]

The considerations involved are not, of course, one-sided. Just as there are some areas of the country in which union defendants fearful of local prejudice wish to remove their cases to the federal courts, so there are other areas in which plaintiffs, fearful of local prejudice, would like to sue unions in the federal courts on diversity grounds.[7] Reversal of the decision below would of course facilitate avoidance of local prejudice in both these situations.

Anomalously, the court below has held that a plaintiff who wants to bring a labor union into federal court on diversity grounds can do so, simply by suing the union as a "class" rather than as an entity, and naming as representatives of the class only individuals whose citizenship is di-

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[6] The following table lists the other seven pending cases, and the damages sought in each:

Case and Docket No.	*Jurisdiction*	*Damages Sought*
White v. United Steelworkers of America, Civ. Ac. No. 1798	W.D.N.C.	$200,000
Braxton v. Int'l Ladies Garment Workers Union, Civ. Ac. Nos. 596-97	E.D.N.C.	$1,000,000
Haddock v. Int'l Ladies Garment Workers Union, Civ. Ac. No. 598	E.D.N.C.	$1,000,000
Horne v. Int'l Ladies Garment Workers Union, Civ. Ac. No. 599	E.D.N.C.	$1,000,000
Kindred v. Upholsterers' Int'l Union et al., Civ. Ac. No. 64-C-45R	W.D.Va.	$125,000
Rowe Furniture Corp. v. Upholsterers' Int'l Union et al., Civ. Ac. No. 64-C-46R	W.D.Va.	$300,000
Tingler v. Upholsterers' Int'l Union et al., Civ. Ac. No. 64-C-47R	W.D.Va.	$75,000

[7] For example, in the one district of the Fourth Circuit which sits in a heavily industrialized area, a libel action against a labor union was instituted recently in federal court *by the plaintiff*. The action was dismissed for lack of jurisdiction on October 21, 1964, on the basis of the Fourth Circuit's decision in the instant case. *Gray* v. *International Typographical Union*, Civ. Ac. No. 15676 (D. Md.).

verse from the plaintiff's. *Tunstall* v. *Bhd. of Locomotive Firemen,* 148 F. 2d 403 (4th Cir. 1945). This device has been widely heralded as a means to prevent labor unions from enjoying "virtual immunity from suit in federal courts." *Calagaz* v. *Calhoun,* 309 F. 2d 248, 252 (5th Cir. 1962). See also *Montgomery Ward & Co.* v. *Langer,* 168 F. 2d 182 (8th Cir. 1948). Cf. *Underwood* v. *Maloney,* 256 F. 2d 334 (3rd Cir. 1958).

But this expansion of diversity jurisdiction to permit *plaintiffs* to bring labor unions into federal court, though desirable in itself, renders the present decision of the court below all the more unfair. For it gives the plaintiff unprecedented power to determine the forum in which the case will be tried. If he wants to be in federal court, he will utilize the "class action" device to create diversity jurisdiction. If, on the other hand, he prefers to be in the State court, he need only sue the union there as an entity, and, under the decision of the court below, the union will be powerless to remove.

It has been said that the development permitting plaintiffs to sue unions in federal court on diversity grounds was necessary "to prevent a failure of justice." *Calagaz, supra,* at p. 252. But surely equity dictates that the labor union have access to the federal courts equally with its adversaries in litigation. The decision of the court below, denying that equal access, countenances a far greater "failure of justice."

The court below recognized that there is "informed sentiment" supporting the treatment of unincorporated associations such as labor unions as citizens of the State where the principal place of business is located. (*Appendix 11*). Indeed, it "readily concede[d] that vis-a-vis a corporation it would be quite feasible to treat a modern labor union as a citizen for diversity purposes." (*Appendix 12,* n. 4). It reasoned, however, that "the question of policy is certainly not one for decision of an intermediate appellate court." (*Id.*).

2. The decision of the court below is inconsistent with

this Court's decision in *Puerto Rico* v. *Russell & Co.*, 288 U. S. 476 (1933).

In *Russell*, this Court held that an unincorporated Puerto Rican "sociedad en comandita" had a unique citizenship, independent of that of its members, for purposes of federal jurisdiction. In the course of the opinion, the Court enunciated a clear standard for determining the citizenship status of unincorporated associations. If an association is endowed with a "complete legal personality" (288 U. S. at 479) and is "consistently regarded as a juridical person" (*Id.* at 481), there is "no adequate reason for holding that [it] has a different status for federal jurisdiction than a corporation" (*Id.* at 482). On the other hand, an association which, though suable as an entity, lacks other attributes of a juridical entity, must be deemed a citizen of each of the states in which it has members, because "what [is] but an association of individuals for so many ends and a juridical entity for only a few, [is] not easily to be treated as if it were a single citizen" (*Id.* at 480).

The sociedad's characteristics which the Court found to constitute a "complete legal personality" were of two types: (1) the law permits the sociedad to act as an entity in its dealings with the outside world;[8] and (2) in internal matters the law recognizes the sociedad as something more than, and distinct from, its individual members.[9]

There can be no question that the labor union today possesses a "complete legal personality" as defined in *Russell*.

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[8] Specifically, the sociedad "is created by articles of association filed as public records"; "may contract, own property, and transact business, sue and be sued in its own name"; and functions through managers in whom "powers of management" are vested (288 U. S. at 481).

[9] Specifically, the sociedad "endures . . . regardless of the death or withdrawal of individual members"; its members "are not primarily liable for its acts and debts"; and its creditors are preferred with respect to its assets and property over the creditors of individual members" (288 U. S. at 481).

The Sixth Circuit has found the characteristics of labor unions "much more impressive" than those of the sociedad in *Russell* "to compel recognition of unincorporated unions as juridical persons equivalent to corporations for purposes of citizenship in cases in which jurisdiction is founded upon diversity of citizenship." *American Federation of Musicians* v. *Stein*, 213 F. 2d 679, 687 (6th Cir.) *cert. denied* 348 U. S. 873 (1954). Likewise, the district court in the present case found (and the Court of Appeals did not disturb its finding) that the Union "is a juridical person as fully and completely as if it were organized as a corporation, having as great unity of action and as much power centered in the governing officers" (*Appendix 1, 5*). That the modern-day labor union has a complete legal personality is likewise the teaching of *United Mine Workers* v. *Coronado Coal Co.*, 259 U. S. 344, 385-86 (1922); *United States* v. *White*, 322 U. S. 694, 701-03 (1944); *Busby* v. *Electric Utilities Employees Union*, 147 F. 2d 865, 867-68 (D. C. Cir. 1945); and *Marshall* v. *International Longshore Union*, 57 Cal. 2d 781, 371 P. 2d 987 (1962).

Moreover, whatever conceivable doubt there might previously have been as to the completeness of the labor union's legal personality surely was removed with the enactment of the Labor-Management Reporting and Disclosure Act of 1959, 29 U. S. C. §§ 401 et. seq. Even prior to 1959, Congress had provided union members freedom from liability comparable to that of corporate shareholders under State law. Section 301(b), Labor-Management Relations Act, 29 U. S. C. § 185(b).[9a] But in 1959, through the LMRDA, Congress filled out the labor union's legal personality so that it is virtually indistinguishable from the corporation's in every

[9a] Section 301(b) provides that: "Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets."

respect. Thus, the LMRDA requires every union to "adopt a constitution and bylaws" and to file them as public records with the Secretary of Labor, 29 U. S. C. §§ 431(a), 435(a), just as corporations are required by State law to adopt and file by-laws. And it regulates virtually every aspect of the union's relationship with its members, in much the same way as State law regulates the relationship of a corporation with its shareholders.[10] The basic premise justifying such regulation is Congress' judgment that a union is not simply a group of individuals, but rather a complex institution with an existence so distinct from its members as to require comprehensive statutory regulation of the union-member relationship. "Trade unions have grown well beyond their beginnings as relatively small, closely knit associations of workingmen where personal, fraternal relationships were characteristic. Like other American institutions some unions have become large and impersonal; they have acquired bureaucratic tendencies and characteristics. . . ." S. Rep. No. 187, 36th Cong. 1st Sess. 6 (1959).

The court below dismissed *Russell* as irrelevant, because *Russell* involved the determination of federal jurisdiction under the Organic Act of Puerto Rico (now 48 U. S. C.

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[10] E.g., the LMRDA contains a "bill of rights" which members may enforce against the union by private legal action (29 U. S. C. §§411-15); it requires unions to file public reports concerning their organizational structure and finances (29 U. S. C. §431); it requires their officers to report any financial relationships which might involve them in conflicts of interest (29 U. S. C. §432); it regulates the relationship between national and local unions (29 U. S. C. §§461-66); it provides a comprehensive code governing the election of union officers (29 U. S. C. §§481-83); it creates statutory standards of fiduciary responsibility for union officers (29 U. S. C. §501) and requires that they be bonded (29 U. S. C. §502); it forbids certain types of loan transactions between unions and their officers or employees (29 U. S. C. §503); and it creates certain statutory qualifications for union office (29 U. S. C. §504).

§§ 863, 864), not the diversity statute.[11] It considered itself bound by this Court's earlier decisions in *Chapman* v. *Barney*, 129 U. S. 677 (1889) and *Great Southern Fireproof Hotel Co.* v. *Jones*, 177 U. S. 449 (1900), in which a joint stock company and a limited partnership were held to lack citizenship, diversity being made to depend upon the citizenship of each of their members. In these early cases, the Court had stated broadly that the rule ascribing a single citizenship to corporations "must not be extended" to embrace unincorporated associations. The court below found nothing in the *Russell* opinion to indicate that this Court "was consciously expanding federal diversity jurisdiction."

This analysis will not survive a reading of the *Russell* opinion. While, to be sure, the precise issue in *Russell* was whether the sociedad had a citizenship for the purpose of federal jurisdiction under the Organic Act, rather than the diversity statute, both the sociedad (which insisted that it was not a citizen) and the Court (which found that it was) treated the questions as indistinguishable. Thus the sociedad, in its brief (77 L. Ed. 905), relied upon *Chapman* v. *Barney* and *Great Southern Fireproof Hotel Corp.* v. *Jones, supra,* in support of its position. And the Court, rejecting that position, couched its entire opinion as an analysis of the diversity precedents. Noting that corporations have been treated as citizens for *diversity* purposes because of their

[11] *Russell* was a suit by the Puerto Rican government to collect assessments on land held by an unincorporated *Sociedad in Comandita,* none of whose members were citizens of Puerto Rico. The sociedad removed the case to federal district court in San Juan, pursuant to Sections 41 and 42 of the Organic Act, now 48 U.S.C. §§ 863, 864, which confer removal jurisdiction on that court not only over "all cases cognizable in the district courts of the United States" but also over "all controversies where all of the parties on either side of the controversy are . . . citizens of a State, Territory, or District of the United States not domiciled in Peurto Rico." The sociedad argued that it fell within the latter provision because, as an unincorporated association, the citizenship of its members controlled and none of them were citizens of Puerto Rico. The Court held, however, that the sociedad was itself a citizen of Puerto Rico.

complete legal personalities (288 U. S. at 479-80), and that the sociedad likewise had a complete legal personality (*Id.* at 481-82), the Court saw "no adequate reason for holding that the sociedad has a different status for purposes of federal jurisdiction than a corporation" (*Id.* at 482). *Chapman* and *Great Southern Fireproof* were distinguished *not* because they were diversity cases, but because the particular associations involved in those cases had had legal personalities "too incomplete" (*Id.* at 480).

Quite clearly, the standards enunciated in *Russell* were intended to govern the determination of citizenship "for purposes of federal jurisdiction" generally, not solely the Organic Act of Puerto Rico.

3. The decision of the court below conflicts, as it acknowledged, with decisions of several other Courts of Appeals. Contrary to the decision of the Court below—that *Chapman* and *Great Southern Fireproof* control, and that no unincorporated association, regardless how complete its legal personality, has a citizenship of its own for diversity purposes—these other Courts of Appeals have viewed *Russell* as enunciating the controlling standard for diversity purposes, and have assigned citizenship to unincorporated associations possessing complete legal personalities. *Mason* v. *American Express Co.*, 334 F. 2d 392 (2d Cir. 1964); *American Federation of Musicians* v. *Stein*, 213 F. 2d 679 (6th Cir.), *cert. denied* 348 U. S. 873 (1954); *Van Sant* v. *American Express Co.*, 169 F. 2d 355 (3d Cir. 1947). See also, *Swan* v. *First Church of Christ*, 225 F. 2d 745 (9th Cir. 1955).

The *Mason* decision, rendered a month before the decision below, is representative. There, the Second Circuit, reasoning that *Chapman* was reversed by the subsequent decision in *Russell*, found that a joint stock association—the very type of association held not to have a citizenship in *Chapman*—now has a single citizenship for diversity purposes. Its analysis of *Russell*, exemplified by the following

excerpts, could not be more squarely in conflict with the reasoning of the court below.

"It is our considered judgment . . . that the Supreme Court had abandoned the artificial and mechanical rule of Chapman v. Barney in favor of a more flexible test for capacity for citizenship, a test which demands that consideration be given to whether an organization's essential characteristics sufficiently invest it, like a corporation, with a complete legal personality distinct from that of the members it represents . . .

* * *

"[O]ur refusal to regard Chapman v. Barney as controlling law today stems primarily from our belief that the Supreme Court, some forty years after Chapman v. Barney, decided to depart from it . . .

* * *

"In 1933 the Supreme Court, in Puerto Rico v. Russell & Co., supra, decided to treat a Puerto Rican business organization as a citizen for jurisdictional purposes despite the fact that it was not a corporation; and although the break with the past there achieved was not as clean as it might otherwise have been, since the court cited Chapman v. Barney without explicitly overruling it, we are nevertheless satisfied that the break was a clear one . . .

* * *

"This systematic appraisal of an organization's essential features under the law of its creation, in order to determine whether these features entitled it to the same treatment as a separate juridical person for diversity purposes as that accorded a corporation, must be regarded as representing a clear departure from Chapman v. Barney's basic assumption that only corporations were entitled to treatment as separate citizens for diversity purposes, and a departure from that

case's consequent mechanical determination of the issue of capacity for citizenship on the basis of whether a state had or had not pinned on an organization the corporate label." (334 F. 2d at 393, 395, 396, 396-97).

Commentators, too, have viewed *Russell* as modifying the prior treatment of unincorporated associations for diversity purposes. Comment, *Unions as Juridical Persons*, 66 Yale L. J. 712, 742-49 (1957); 3 Moore, Federal Practice §17.25, pp. 1413-14 (1963); Note, 33 Colum. L. Rev. 540, 541 (1933).

4. Apart from its holding that *Russell* is inapplicable, the court below briefly listed two other grounds to support its decision.

A. The Court below stated that "whatever basis there once was for the belief that Russell intended to lay down new principles for the determination of citizenship for diversity jurisdiction purposes, it was reversed by the passage of the 1958 amendment to the diversity statute." This is in direct conflict with the Second Circuit's decision in *Mason* v. *American Express Co., supra.* In *Mason,* decided a month before the decision below, the Second Circuit, though demonstrating its awareness of the 1958 amendment (334 F. 2d at 394 n. 2), concluded that *Russell* states the controlling principles for determining the citizenship status of unincorporated associations.

B. The court below reasoned that assigning a single citizenship to labor unions might lead to a determination that they have but one residence for *venue* purposes as well (*Appendix 11*). The court below apparently overlooked that Congress has expressly defined the venue of actions involving labor unions. Section 301(c) of the Labor-Management Relations Act, 29 U. S. C. § 185(c) provides:

"For the purposes of actions and proceedings by or against labor organizations in the district courts of the

United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members."

CONCLUSION

For the reasons set forth hereinabove, this petition should be granted.

Respectfully submitted,

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APPENDIX

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DIVISION OF NORTH CAROLINA CHARLOTTE DIVISION

Civil No. 1798

N. F. WHITE, JR.,
Plaintiff,

v.

UNITED STEELWORKERS OF AMERICA, AFL-CIO, an unincorporated association,
Defendant.

and

Civil No. 1797

R. H. BOULIGNY, INC., a corporation,
Plaintiff,

v.

UNITED STEELWORKERS OF AMERICA, AFL-CIO, an unincorporated association,
Defendant.

MEMORANDUM OPINION

CRAVEN, Chief Judge:

On plaintiffs' motion to remand the above-captioned cases, the court finds the ultimate facts to be that members of the defendant unincorporated association are citizens of North Carolina and that the defendant union is a juridical person as fully and completely as if it were organized as a corporation, having as great unity of action and as much

power centered in the governing officers, and that its principal office and place of business is in Pittsburgh, Pennsylvania. See: *American Federation of Musicians* v. *Stein*, 213 F. 2d 679 (6th Cir. 1954). There is a trend to treat unincorporated associations in the same manner as corporations and to treat them as citizens of the state wherein the principal office is located for jurisdictional purposes. But, the greater number of cases still hold that even in cases in which labor unions may sue or be sued by association name they can have no juridical person citizenship for purposes of diversity jurisdiction. Barron & Holtzoff, *Federal Practice & Procedure*, Section 569. Neither the Supreme Court nor the Court of Appeals for the Fourth Circuit has ever ruled specifically upon the question. See: *Textile Workers Union of America* v. *Cone Mills Corp.*, 268 F. 2d 920 (4th Cir. 1959).

The approach and rationale of the *Stein* case is extremely persuasive. There appears to be no common sense reason for treating an unincorporated national labor union differently from a corporation. See: 66 Yale L. J. 742.

I am caught on the horns of a dilemma. To remand is to adopt the poorer reasoned but more firmly established rule. To retain jurisdiction may result in several days wasted trial time ending in ultimate dismissal for failure of jurisdiction.

An order remanding a case to the state court from which it was removed is not reviewable on appeal. 28 U. S. C. A. Section 1447(d); Barron & Holtzoff, *Federal Practice & Procedure*, Section 109. See: *Santa Margarita Mutual Water Co.* v. *State Water Rights Board of the State of California*, 165 F. Supp. 870, 879, for an interesting attempt to secure appellate review.

Retention of jurisdiction *is* appealable, and may be reviewed in the Court of Appeals for the Fourth Circuit. On my own motion, I certify that I am of the opinion that the order I am about to sign denying the motion to remand

involves a controlling question of law as to which there is substantial ground for difference of opinion, and I am further of the opinion that an immediate appeal from this order would materially advance the ultimate determination of the litigation, and would avoid an inherent risk of several days wasted trial time, and be in the interest of justice. Further proceedings in the district court are stayed to permit appeal to be taken from the order dismissing the motion for remand, the application for such review to be made within ten days after the date of the order denying remand. 28 U. S. C. A. Section 1292(b).

Counsel may submit an appropriate order.
This *12th* day of November, 1963.

J. B. CRAVEN, JR., CHIEF JUDGE
UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA.

Appendix 4

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 9326.

R. H. BOULIGNY, INC.,
Appellant,

versus

UNITED STEELWORKERS OF AMERICA,
AFL-CIO, an unincorporated association,
Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA, AT CHARLOTTE. J. BRAXTON CRAVEN, JR., DISTRICT JUDGE.

(Argued April 28, 1964. Decided August 6, 1964.)

Before SOBELOFF, Chief Judge, and BOREMAN and J. SPENCER BELL, Circuit Judges.

J. SPENCER BELL, Circuit Judge:

This is an appeal from an order of the district court denying a motion to remand the case to the state court. The district court has certified the appeal under 28 U. S. C. A. §1292(b)(1958). We exercised our discretion to permit the appeal.

The plaintiff, a North Carolina corporation, brought suit for libel growing out of an organizational campaign in the state court against the defendant, United Steelworkers of America, an unincorporated labor union having its headquarters and principal place of business at Pittsburgh, Pennsylvania. The defendant removed the case to the district court on the grounds both of diversity of citizenship and that the subject matter of the action arises under the laws of the United States. Plaintiff moved to remand the case to the state court. In contesting plaintiffs motion the defendant contended that it is a citizen of Pennsylvania with its principal place of business in that state, conceding, however, that certain of its members are citizens of North Carolina. The district court found the defendant to be "a juridical person as fully and completely as if it were organized as a corporation . . . and that its principal office and place of business is in Pittsburgh, Pennsylvania." It thereupon entered an order denying the motion to remand and certified an appeal to this court. We conclude that the order of the district court must be reversed with instructions to grant the motion to remand.

We discuss first the question of diversity of jurisdiction. In *Bank of the United States* v. *Deveaux,* 9 U. S. (5 Cranch) 37 (1809), Chief Justice Marshall laid down the principle that a corporation is ". . . a mere creature of the law, invisible, intangible and incorporeal" which for purposes of diversity jurisdiction could not be treated as a citizen notwithstanding the fact that the corporation could sue and be sued in its own name. In 1844, the court departed from this doctrine in the case of *Louisville, C. & C. R.R.* v. *Letson,* 43 (2 Howard) 497 (1844), holding a corporation to be "deemed" a citizen of the chartering state. Pressure from the dissenters eventually forced the Court to return to Marshall's concept in *Marshall* v. *Baltimore and Ohio R.R.,* 57 U. S. (16 Howard) 334 (1853), where it held that a corporation was not a citizen but an artificial

being and that the citizenship of its stockholders must control. However, the court achieved the same end result as in *Letson* (diversity jurisdiction) by creating a conclusive persumption that all of the stockholders were citizens of the chartering state. This doctrine remained unchanged until 1958 when 28 U. S. C. A. §1332 was amended by adding section (c). WRIGHT, FEDERAL COURTS 76 (1963). The doctrine has been criticized as an unjustifiable expansion of federal jurisdiction by means of a fiction; nevertheless, unincorporated associations have sought unsuccessfully to bring themselves within the rule.

In *Chapman* v. *Barney,* 129 U. S. 677 (1889), the Supreme Court laid down the rule with respect to unincorporated associations. It held that, for purposes of diversity jurisdiction, the actual citizenship of each of the members of an unincorporated association (in that case a joint stock company) is controlling. In *Great Southern Fireproof Hotel Co.* v. *Jones,* 177 U. S. 449, 454-55 (1900), the Court reaffirmed its holding:

> "This court does not hold that either a voluntary association of persons, or an association into a body politic created by law, is a citizen of a State within the meaning of the Constitution.
>
> . . . .
>
> "But the express company cannot be a *citizen* of New York, within the meaning of the statutes regulating jurisdiction, unless it be a corporation."

The Court, referring to the rule with respect to corporations, made it clear that the rule was not to be extended:

> "That a limited partnership association created under the Pennsylvania Statute may be described as a '*quasi* corporation,' having some of the characteristics of a corporation, or as a 'new artificial person,' is not a sufficient reason for regarding it as a corporation within the jurisdictional rule heretofore adverted to.

> ***That rule must not be extended. We are unwilling to extend it so as to embrace partnership associations.***" (Emphasis added.) 177 U. S. at 457.

We find no subsequent decision of the Court which would justify us in concluding that the rule has been extended. The Court did not do so in *United Mine Workers* v. *Coronado Coal Co.*, 259 U. S. 344 (1922). In that case the Coronado Coal Company brought suit against the international and district and local unions of the United Mine Workers for damages under Section 7 of the Sherman Anti-Trust Act for conspiracy to restrain interstate commerce and to damage plaintiff's property. The unions moved to dismiss on the ground that as unincorporated associations they were not subject to suit. Since there was federal question jurisdiction, the diversity of citizenship issue was not involved. In an extended discussion the Court held that unions were suable as such but the Court was careful to limit the application of the rule it was laying down.

> "Though such a conclusion as to the suability of trades unions is of primary importance in the working out of justice and in protecting individuals and society from possibility of oppression and injury in their lawful rights from the existence of such powerful entities as trade unions, ***it is after all in essence and principle merely a procedural matter.*** As a matter of substantive law, all the members of the union egaged in a combination doing unlawful injury are liable to suit and recovery. . . ." (Emphasis added.) 259 U. S. at 390.

We now come to the case which purportedly has furnished the principal support for those who contend that the rule has been weakened. We think that the case furnishes no support whatsoever for such a position. In *Puerto Rico* v. *Russell & Co.*, 288 U. S. 476 (1933), the petitioner, People

of Puerto Rico[1] brought suit in the insular court of Puerto Rico against Russell & Co. to collect a Puerto Rican tax assessment. Russell & Co. was an unincorporated association organized under Puerto Rican law as a *Sociedad en Comandita* (S. en C.). In the tradition of the civil law a *Sociedad en Comandita* has many of the characteristics which both corporations and limited partnerships have under the common law although those of the former predominate. The individual members of the *Sociedad* were not named as parties. They appeared specially and removed the case to the United States District Court for the District of Puerto Rico. The Supreme Court reversed and directed the district court to remand the case to the Puerto Rican insular court. The petition to remove and the decision of the Court were expressly based upon sections 41 and 42 of the Organic Act of Puerto Rico, now 48 U. S. C. A. §§863, 864 (1948). Section 41 provided that in addition to the jurisdiction possessed by the United States District Courts generally, the United States District Court for the District of Puerto Rico should have additionally jurisdiction of "all controversies where all of the parties on either side of the controversy are citizens or subjects of a foreign State or States, or citizens of a State, Territory, or District of the United States *not domiciled in Puerto Rico.* . . ."[2] (Emphasis added.) Section 42 provided for removal of any

[1] The fact that the plaintiff was the Puerto Rican Government was itself enough to warn the reader that the case could not involve constitutional diversity jurisdiction. A state, or territory, or policial unit cannot be a citizen in that sense. *Postal Tel. Cable Co.* v. *Alabama,* 155 U. S. 482, 487 (1894).

[2] It is obvious that this statute would not be constitutional as applied to an Article III district court. It was valid as enacted because the district court of Puerto Rico was a territorial court created by virtue of the power conferred on the Congress by Article IV §3 to make all needful rules and regulations respecting the territory belonging to the United States. *Balzac* v. *People of Porto Rico,* 258 U. S. 298 (1922); *Porto Rico Ry., Light & Power Co.* v. *Colom,* 106 F. 2d 345 (1 Cir.), *cert. denied,* 308 U. S. 617 (1939).

case in which the court had original jurisdiction under Section 41. Although in view of the character of the plaintiff, the suit could on no theory be entertained as a diversity suit by an Article III court, the Supreme Court said that "admittedly, if the individual members of the *Sociedad* are 'parties' within the meaning of the Organic Act . . . the suit is one within the jurisdiction of the District Court because of their non-residence, *diversity of citizenship* being unnecessary." 228 U. S. at 478. (Emphasis added.) Thus the question before the Court was simply one of the interpretation of the statute—not a question of constitutional diversity jurisdiction. The Court by analogy to a common law corporation held that the defendant, a civil law *Sociedad* had a domicil in Puerto Rico and thus could not claim the domicil of its individual members to acquire the non-resident status required by the Organic Act. Clearly the case does not by any stretch of the imagination hold that the *Sociedad* was a citizen of Puerto Rico for purposes of diversity jurisdiction under Article III. Nor can the Court's analogy between the civil law *Sociedad* and the common law corporation justify a contention that it was consciously expanding federal diversity jurisdiction.

American Federation of Musicians v. *Stein,* 213 F. 2d 679 (6 Cir.), *cert. denied,* 348 U. S. 873 (1954), since it rested upon *Puerto Rico* v. *Russell & Co., supra,* can furnish no support for defendant's contention. Furthermore, although it expressed sympathy with the argument the case did not hold that a labor union was a citizen for diversity purposes. It merely held that the district court was justified in issuing a temporary injunction until the issue could be fully studied. It is interesting to note that the district court, when it did reach the issue, rejected the contention. *Stein* v. *American Federation of Musicians,* 183 F. Supp. 99 (M.D. Tenn. 1960). After reviewing the cases, the court reached the conclusion that the courts were following the rule that in cases where federal jurisdiction was based

on diversity grounds "citizenship of an unincorporated association, including labor unions, is determined by the citizenship of its individual members." 183 F. Supp. at 100.[3]

Whatever basis there once was for the belief that *Russell* intended to lay down new principles for the determination of citizenship for diversity jurisdiction purposes, it was reversed by the passage of the 1958 amendment to the diversity statute. Prior to the 1958 amendment which added subparagraph (c) to 28 U. S. C. §1332 the argument that the courts could substantially equate unincorporated associations with corporations by a minor feat of interpretation was easy to make. The statute spoke only of citizens; the question was whether an unincorporated association should be treated as a citizen—a question merely of interpretation—and the court could resolve it by application of the same kind of presumption that had served in the case of corporations. The 1958 amendment, however, did two things that upset the argument: (1) For the first time, it referred specifically to corporations, providing that they shall be "deemed" citizens. The old presumption that all the stockholders are citizens of the state of incorporation has been abandoned; it is now no necessary part of the argument for attributing citizenship to these entities. Corporations

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[3] The rationale of *Van Sant* v. *American Express Co.*, 169 F. 2d 355 (3 Cir. 1947), which found diversity, appears to be that since a New York joint stock association is treated by the New York courts "for all practical purposes" as a corporation it does not fall within the rule of *Chapman* v. *Barney*. The court lays stress on the fact that the issue was not raised by the defendant until rehearing on appeal. The court also cites Prof. Moore's comment on *Puerto Rico* v. *Russell & Co.*, 288 U. S. 476, at 2 MOORE'S FEDERAL PRACTICE, 2100, to the effect that the Chapman rule is itself beginning to show signs of being outmoded. Cf. 33 COLUM. L. REV. 540 (1933). We have rejected this interpretation of *Russell*.

In *Mason* v. *American Express Co.*, 33 L. W. 2016 (2 Cir. decided 7/2/64) the Second Circuit was persuaded by the language of *Russell* to extend citizenship to a New York joint stock association for diversity purposes. We must respectfully disagree with that opinion.

are treated as citizens because the Act of Congress directs that they be so treated. (2) For many corporations the statute now provides dual citizenship: a corporation is to be treated as a citizen of any state by which it is incorporated, and also of the state in which it maintains its principal place of business. This is, in the first place, confirmation of the fact that the fiction as to the citizenship of the stockholders has been abandoned.

It is hardly reasonable to presume that all the stockholders are domiciled in each of two separate states. But the principal point is that, even laying aside the matter of multiple incorporation, unincorporated associations cannot be equated with corporations by a simple judicial decision attributing citizenship to them. They are incapable of dual citizenship, and hence would be treated more favorably than corporations for diversity purposes.

Such associations, if treated as citizens, would also be treated more favorably than corporations in the matter of venue. A corporation may be sued in any district in which it is incorporated, or licensed to do business, or is doing business. 28 U. S. C. §1391(c) (1958). By no stretch of the process of interpretation can this section be read as applying to an unincorporated association. Hence such an association, if treated as a citizen for diversity purposes, would probably be held to be a resident of the district in which its principal office is located, making that district the only proper venue other than the district of the plaintiff's residence.

The Reporters for the American Law Institute's Study of the Division of Jurisdiction between State and Federal Courts are proposing that unincorporated associations be treated as citizens (of the state where the principal place of business is located) for purposes of diversity jurisdiction. See Tent. Draft No. 2, §1301(b)(2) (1964). This indicates that there is informed sentiment in favor of such a development. *Cf.* Comment, ***Unions as Juridical Persons,***

66 YALE L.J. 712 (1957). The proposal, however, is that the change be brought about by an Act of Congress amending the Judicial Code—not by judicial interpretation. The fact that such a change is proposed recognizes the propriety of addressing such a proposal to Congress.[4] It also recognizes the fact that under existing law unincorporated associations cannot be treated as citizens; indeed, in the Commentary (*id.*, p. 61), the law existing to this effect is expressly recognized, though it is said there have been some "inroads" on the rule in recent years.

Having found no diversity, we also think that no federal question jurisdiction exists. The National Labor Relations Act is concerned only with the coercive effect of an alleged libel and not with its character as a common law tort. *Radio Corporation of America,* 106 NLRB No. 251 (1953). In accordance with the doctrine announced in *Erie R.R.* v. *Tompkins,* 304 U. S. 64 (1938), federal courts uniformly have held that libel and slander actions are to be governed by the substantive law of the state in which the torts allegedly occur. *Schenectady Union Publishing Co.* v. *Sweeney,* 122 F. 2d 288 (2 Cir. 1941), *aff'd per curiam,* 316 U. S. 642 (1942). Since the National Labor Relations Act is not concerned with libel as a common law tort and the offense is specifically within the aegis of the substantive state law, we find no federal question.

Reversed.

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[4] We readily concede that vis-a-vis a corporation it would be quite feasible to treat a modern labor union as a citizen for diversity purposes. But the question of policy is certainly not one for decision of an intermediate appellate court.

Appendix 13

JUDGMENT

Filed and Entered, August 6, 1964

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 9326

R. H. BOULIGNY, INC.
Appellant,

versus

UNITED STEELWORKERS OF AMERICA,
AFL-CIO, an unincorporated association,
Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA.

This cause came on to be heard on the record from the United States District Court for the Western District of North Carolina, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the order of the said District Court appealed from, in this cause, be, and the same is hereby, reversed with costs; and that this cause be, and the same is hereby, remanded to the United States District Court for the Western District of North Carolina, at Charlotte, for further proceedings not inconsistent with the opinion of the Court filed herein.

s/ SIMON SOBELOFF
Chief Judge, Fourth Circuit
s/ A. T. BOREMAN
United States Circuit Judge
s/ J. SPENCER BELL
United States Circuit Judge

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IN THE

Supreme Court of the United States

October Term, 1964

No. [redacted] 19

UNITED STEELWORKERS OF AMERICA, AFL-CIO,

Petitioner

vs.

R. H. BOULIGNY, INC.,

Respondent

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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IN THE

Supreme Court of the United States

October Term, 1964

No.——

UNITED STEELWORKERS OF AMERICA, AFL-CIO,

Petitioner

vs.

R. H. BOULIGNY, INC.,

Respondent

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

QUESTIONS PRESENTED

1. Whether an unincorporated association with members who are citizens of the state in which an action is instituted, and in which the plaintiff is incorporated, may remove such action to the United States District Court on the basis of its allegations that it is a labor organization and a citizen of another state?

2. May an unincorporated association, whether a juridical person or not, acquire the status of a citizen within the meaning of Article III, Section 2 of the United States Constitution, and 28 U.S.C. Sec. 1332 (a) (1), solely by reason of having a principal place of business in a state?

STATEMENT OF THE CASE

This case is one of two companion cases filed at the same time in the state court and removed by petitioner, United Steelworkers of America ("the Union") to the United States District Court. The other case is White v. United Steelworkers of America, cited at page 10 of the Union's Petition. Respondent R. H. Bouligny, Inc. ("Bouligny") in its complaint stated a cause of action for libel, alleging that the Union had falsely accused it of certain scandalous conduct in a widely circulated Union newspaper. White, the plaintiff in the companion case, in his complaint stated a cause of action for libel, alleging that the Union published in the same Union newspaper a defamatory and suggestive cartoon caricature picturing him in the bowl of a commode. The plaintiff White, an employee of Bouligny, and the Union consented to an order of the District Court that the jurisdictional disposition of the White case would abide by the decision in this case.

The Union offered no affidavits or other evidence in the District Court to prove its assertions that it is a juridical person and a citizen of the State of Pennsylvania. No evidence was offered as to how the Union is organized and how it operates.

The Union claims to be a citizen of Pennsylvania, but does not claim its status as a citizen and a sep-

arate legal personality pursuant to any law of the State of Pennsylvania, nor does it claim a formal organization in that State. The sole basis for the Steelworkers' contention that it is a citizen of Pennsylvania is that its principal place of business is located there. The Union contends that certain acts of Congress have conferred upon it a separate legal personality but does not contend that any law has conferred upon it a citizenship in the State of Pennsylvania. The Union has not claimed or proven that any of its members are citizens of Pennsylvania. Bouligny introduced proof that the Union has many members who are citizens of North Carolina (R. App. 9),[1] which has not been rebutted by the Union.

GROUNDS FOR DENYING THE WRIT

"That a limited partnership association created under the Pennsylvania statutes may be described as a 'quasi corporation,' having some of the characteristics of a corporation, or as a 'new artificial person,' is not a sufficient reason for regarding it as a corporation within the jurisdictional rule heretofore adverted to. That rule must not be extended." *Great Southern Fireproof Hotel Co. v. Jones*, 177 U. S. 449 (1900).

1. The decision of the Court below is wholly in accord with the applicable decisions of this Court.

This Court has firmly established the rule that unincorporated associations are neither juridical persons nor citizens for purposes of diversity jurisdiction. *Thomas v. Ohio State University Board of Trustees*,

[1]For simplicity this brief adopts the reference symbols explained in footnote 1 of the Union's Petition at page 3 of that Petition.

195 U. S. 207 (1904); *Great Southern Fireproof Hotel Co. v. Jones*, 177 U. S. 449 (1900); *Chapman v. Barney*, 129 U. S. 677 (1889); *Lafayette Ins. Co. v. French*, 59 U. S. 404 (1856).

The association considered in *Great Southern Fireproof Hotel Co.* was held by this Court not to be a citizen of Pennsylvania. It was created under an act of the General Assembly of Pennsylvania authorizing the formation of associations in which the capital subscribed alone would be responsible for the debts of the association. The act provided that the association was a citizen of the State of Pennsylvania. This Court disagreed with the holding in *Andrews Bros. Co. v. Youngstown Coke Co.*, 86 F. 585 (6th Cir. 1898), that an association formed under the Pennsylvania statute was a citizen of Pennsylvania for the purposes of diversity jurisdiction. It appears from the Andrews Bros. Co. opinion of the Sixth Circuit Court, that, in addition to the foregoing, the association, pursuant to the act, was: (1) governed by a board of managers, (2) empowered to sue and to be sued in the association's name, (3) authorized to hold and convey real estate in its own name, (4) authorized to distribute profits by means of dividends, provided such dividends did not impair capital; and (5) that the interests of the members were freely transferrable or assignable, though the assignee could not participate in the affairs of the association until elected to membership. The Union in this case has not demonstrated that it has characteristics of a juridical entity equal to those which this Court has already held to be insufficient for the purpose of establishing an association as a citizen for diversity purposes.

The position of the Union in this case is not supported by *People of Puerto Rico v. Russell & Co.*, 288 U. S. 476 (1933). This Court was careful to distinguish the "Sociedad en comandita," created under the Code of Puerto Rico, involved there, from associations created in the United States:

> "The tradition of the common law is to treat as legal persons only incorporated groups and to assimilate all others to partnerships. Chapman v. Barney, supra; Great Southern Fireproof Hotel Co. v. Jones, supra. The tradition of the civil law, as expressed in the Code of Puerto Rico, is otherwise. Therefore, to call the Sociedad en comandita a limited partnership in common-law sense, as the respondent and others have done, is to invoke a false analogy. In the law of its creation, the Sociedad is consistently regarded as a juridical person."

The *Puerto Rico* opinion of this Court cited with approval the case of *Levering & Garrigues Co. v. Morrin*, 61 F. 2d 115 (2d Cir. 1933), aff'd, 289 U. S. 103 (1933) where the Second Circuit held that a labor union could not be a citizen even though it might be procedurally suable as a legal entity under the doctrine of *United Mineworkers v. Coronada Coal Co.*, 259 U. S. 344 (1922).

As pointed out in the opinion of the court below, *Puerto Rico* did not involve a construction of Article III of the United States Constitution or of 28 U.S.C. Sec. 1332. The petition to remove and the Court's decision were based upon Sections 41 and 42 of the Organic Act of Puerto Rico, now 48 U.S.C. Sections 863, 864 (1948), enacted pursuant to the authority of

Article IV, Section 3 of the United States Constitution. *Puero Rico*, therefore, did not hold that the Article III constitutional judicial power of the United States extended to the controversy between Puerto Rico and the Sociedad. The Sociedad was not held to be a citizen within the meaning of Article III.

The Union in its Petition for a Writ of Certiorari at pages 3 through 6 recites the District Court's "Finding of Fact" that the Union is a juridical person as completely as if organized as a corporation and contends that the Fourth Circuit did not disturb this "Finding of Fact." The Union introduced no evidence from which such a "fact" might have been found, but relied solely upon several acts of Congress imposing certain obligations upon labor unions and conferring certain immunities. The question then is not one of fact but one of law. The reversal by the Fourth Circuit amounts to a repudiation of this so-called finding of fact which is, in truth, not a finding of fact but a conclusion of law. The Union has failed to bring itself within the purview of the *Puerto Rico* decision upon the facts.

The petition in this case presents two questions. First, may the Union be a juridical person for the purpose of having the status of a citizen? In the above cited cases, this status was claimed on behalf of associations created pursuant to statute, and the citizenship was claimed to be in the state where the statute permitted the organization of the association. The Union in this case lacks a state of formal organization, and claims to be a citizen of the state where its principal place of business is located. This presents the second question, may the Union, whether a jurid-

ical person or not, be a citizen of a state solely because its principal place of business is located there?

The decisions of this Court afford a clear negative answer to that question. This Court has never held for the purpose of establishing diversity jurisdiction that any association might be a citizen of a state merely because its principal place of business is located therein. In *Bank of U. S. v. Deveaux*, 9 U. S. 37 (1809), Chief Justice Marshall characterized a corporation as ". . . a mere creature of the law, invisible, intangible and incorporeal" and not a citizen for diversity purposes. This Court in *Louisville C. & C. R.R. v. Letson*, 43 U. S. 497 (1844) held that "when the corporation exercises its powers in the State which chartered it, that is its residence. . ." and that the corporation is to be "deemed" a citizen of that state for purposes of diversity jurisdiction. In *Marshall v. Baltimore & Ohio R.R.*, 57 U. S. 314 (1853), this Court held that a corporation cannot be a citizen (a decision forced by the dissenters in the *Letson* case, according to the opinion below), notwithstanding that the same result as in *Letson* was brought about by a conclusive presumption that all stockholders are citizens of the chartering state. The issuance of a state charter is essential to citizenship by the reasoning in either case. An unincorporated association is not so easily deemed to be a citizen of the state in which is located its principal place of business, nor are its members so easily deemed to be citizens of that state. Article III of the United States Constitution would be stretched far beyond traditional judicial concepts in permitting an unincorporated association, not otherwise having the status of a citizen, to acquire that status for federal

jurisdictional purposes by establishing a principal place of business in a state.

Far from helping the Union, the 1958 amendment of 28 U.S.C. Section 1332 by the addition of Subsection (c) is not indicative of a policy favoring the view that a principal place of business within a state establishes citizenship in that state within the constitutional meaning. This subsection reads,

> "For the purposes of this Section, and Section 1441 of this Title, a corporation shall be deemed a citizen of any state by which it has been incorporated and of the State where it has its principal place of business."

The word "deemed" is not clear in its precise meaning as used in this subsection. The legislative history of this subsection given in Senate Report No. 1830 found in 1958 U. S. Code, Cong. & Adm. News, p. 3099 at page 3101, says:

> "It is now established doctrine that a corporation, for the purposes of jurisdiction, is deemed a citizen of the State in which it is incorporated (St. L. & S. F. Ry. Co. v. James, 161 U. S. 545, 16 S. Ct. 621, 40 L.Ed. 802 (1896)."

However, this Court in the *James* case did not revert to the doctrine of the *Letson* case, but plainly restated the doctrine that a corporation is presumed to be composed of citizens of the state which created it. The word "deemed" in 28 U.S.C. Sec. 1332 (c) would therefore mean "deemed" by reason of this conclusive persumption. This Court in *James* declined to extend the meaning of "citizen" in order to adopt the doctrine urged therein that a corporation domesticated in an-

other state "shall be deemed to be composed of citizens of the second state. . . ." There is nothing in *James* which would support the quoted part of the statute as an extension of federal diversity jurisdiction. All the stockholders of a corporation could not at once be presumed citizens of the incorporating state and also citizens of the state of the principal place of business. The provision of the statute that a corporation is deemed a citizen of the state of its principal place of business is not a creation of a new citizenship, but a limitation upon existing federal diversity jurisdiction accomplished by the use of paradoxical terms in the statute. This statutory purpose is the opposite of the Union's purpose. The traditional doctrine that a corporation is a citizen of the chartering state by reason of a presumption that all stockholders are citizens of that state would be inconsistent with any presumption that stockholders and association members might be citizens of the state of the principal place of business.

2. The decision of the court below does not depart from the traditional federal diversity jurisdiction rule ordinarily applied by the circuit courts, and there is consequently no need for review by this Court. See *Calagaz v. Calhoon,* 309 F. 2d 248 (5th Cir. 1962) (labor union); *Hanson v. Chicago B. & Q. R. Co.,* 282 F. 2d 758 (7th Cir. 1960) cert. denied, 365 U. S. 850 (1961) (labor union); *Brocki v. American Express Co.,* 279 F. 2d 785 (6th Cir. 1960); *Arbuthnot v. State Automobile Ins. Assn.,* 264 F. 2d 260 (10th Cir. 1959); *Lowry v. International Brotherhood of Boiler Makers, Iron Ship Builders & Helpers of America,* 259 F. 2d 568 (5th Cir. 1958) (labor union); *Underwood v. Malony,* 256 F. 2d 334 (3d Cir. 1958) cert. denied, 358

U. S. 864 (1958) (labor union); *Swan v. First Church of Christ, Scientist, in Boston*, 225 F. 2d 745 (9th Cir. 1955); *Hettenbaugh v. Airline Pilots Assn. Internatl.*, 189 F. 2d 319 (5th Cir. 1951) (labor union); *Steele v. Guaranty Trust Co. of N. Y.*, 164 F. 2d 387 (2d Cir. 1947) cert. denied, 33 U. S. 843 (1948); *Tunstall v. Brotherhood of Locomotive F. and E.*, 148 F. 2d 403 (4th Cir. 1945); *Wise v. Brotherhood of Locomotive Firemen*, 252 F. 961 (8th Cir. 1918) (labor union).

Mason v. American Express Co., 334 F. 2d 392 (2d Cir. 1964) is the only clean break with that tradition. The association involved there was a New York joint stock association, organized under a New York statute, and was apparently very similar to the one in *Andrews Bros. Co. v. Youngstown Coke Co., supra. Mason* is not in disagreement with the decision below upon the second issue, the association there having a formal organization under the statutes of New York. It cannot be said that the Second Circuit would have reached a different result in this case. The circuits therefore are not in conflict in a way which should give cause for a review on a writ of certiorari. Further, if there is a conflict with the traditional rule established by this Court, it was created by the Second Circuit and not the court below. There would consequently appear to be no cause for review of the decision below.

No case has been found prior to the *Mason* case which broke with tradition sharply enough so that it could be said with any degree of certainty that any such break had occurred. *American Federation of Musicians v. Stein*, 213 F. 2d 679 (6th Cir. 1954) cert. denied, 348 U. S. 673 (1954), was not such a break. The Court in that case held only that the dis-

trict court had jurisdiction to issue an injunction pending a determination of whether it had jurisdiction of the parties. In arriving at this holding, the Court indulged in speculation that the district court might need time to weigh the authorities and make a determination as to whether the diversity jurisdiction rule might be changing.

The opinion in *Van Sant v. American Express Co.*, 169 F. 2d 355 (3d Cir. 1947) is as much subject to the construction that it holds that the objection to diversity jurisdiction was made too late for the first time on rehearing of the appeal as it is to the interpretation that the joint stock association created under the statutes of New York is a citizen. The Court says at page 372:

> "The point involved, in our view, is not under the rule of Chapman v. Barney. . . ."

The Court in Footnote 7 on the same page seems to recognize the continuing validity of the *Chapman* rule, and the Court does not appear to think that it is departing from that rule. In *Swan v. First Church of Christ, Scientist, in Boston*, 225 F. 2d 745 (9th Cir. 1955), the only question was whether the church was a corporation or not. The Ninth Circuit apparently had no doubts that the church was not a citizen if it was not a corporation.

Stein, *Van Sant*, and *Swan*, like *Mason*, contained no intimation that those courts might achieve a result different from that in the court below upon the second question. There is no indication that any circuit might decide this case differently. No case has been found in which the court indicates that it might entertain the idea that an association, not organized pur-

suant to any statute, could be a citizen. There is, therefore, upon the facts of this case, no conflict in the circuits which ought to be cause for review.

3. There are compelling reasons of policy for not disturbing the decision below.

The American Law Institute has undertaken a study of the division of jurisdiction between state and federal courts and has published two tentative drafts. Diversity jurisdiction as applied to unincorporated associations is a part of the study. See Tentative Draft No. 2, Section 1301 (b) (2) (1964). This effort may result in useful legislation in the area of diversity jurisdiction as it pertains to unincorporated associations. Consequently, a review by this Court at this time would be premature.

The main current of legal thought from the time of the decision in *Great Southern Fireproof Hotel Co. v. Jones, supra,* until the present time has been that it is unwise to expand federal diversity jurisdiction by including unincorporated associations as citizens. The limitation of federal diversity jurisdiction rather than the expansion of it has been considered wise policy. In the American Law Institute's study of the division of jurisdiction between state and federal courts, Tentative Draft No. 1 (1963) the general statement on diversity jurisdiction appearing at page 36 is as follows:

"There should be stated at the outset the firm premise of the Reporters that access to the federal courts because of the diversity of citizenship of the parties should be permitted only upon a showing of strong reasons therefor and only to the extent that these reasons justify. This premise is grounded up-

on the political axiom, advanced by Hamilton in Justification of the Federal Judicial Power, that judicial and legislative authority should be co-extensive. So long as federal courts continue to decide cases arising under state law without the possibility of state review, the state's judicial power is less extensive than its legislative power; this is an undesirable interference with state autonomy. It would be preferable to see the use of the federal courts concentrated upon the adjudication of rights created by federal substantive law. In such adjudication the federal courts speak with the authority which they lack in diversity cases since Erie R.R. v. Thompkins, 304 U. S. 64 (1938), and can thus exercise the creative function which is essential to their dignity and prestige."

The history and development of federal diversity jurisdiction is reviewed in Friendly, Historic Basis of Diversity Jurisdiction (1928), 41 Harv. L. Rev. 483, and at page 510 this sound conclusion is presented:

"The steady expansion of the jurisdiction of the federal courts, especially since reconstruction days, has been but a reflex of the general growth of federal political power. That growth will not abate, since it is responsive to deep social and economic causes. Only one aspect of the work of the federal courts is out of the current of these nationalizing forces — the jurisdiction based on diversity of citizenship. This had its origin in fears of local hostilities, which had only a speculative existence in 1789, and are still less real today. The unifying tendencies of America here make for a recession of jurisdiction to the state, rather than an extension of federal authority. The pressure of distinctively

federal litigation may call for relief of business that intrinsically belongs to the state courts. How far, if at all, the United States courts should be left with jurisdiction merely because the parties are citizens of different states is a question which calls for critical re-examination of the practical bases of diversity jurisdiction."

This sound policy of restricting diversity jurisdiction was followed by Congress in 1958 when the present subsection (c) was made a part of 28 U.S.C. Section 1332. Now that Congress has undertaken to legislate specifically as to corporations, the contention that unincorporated associations may be citizens within the meaning of 28 U.S.C. Section 1332 is less tenable.

The author of a note, 38 Harvard L. Rev. 510 (1925), wisely suggests that since the heat of conflict occasionally surrounding labor unions is generated by friction between different strata of society, rather than by different geographic regions, that type of controversy is better left in the state courts.

There are difficulties attendant upon granting diversity jurisdiction to unincorporated associations because they have characteristics of an entity which are not present in the case of corporations. The corporate form of organization is well defined and universally recognizable, all being treated alike for diversity jurisdiction purposes; but associations can and do exist with an infinite variety of shades and combinations of corporate characteristics. If the concept of a citizen were expanded to include some unincorporated associations by reason of their characteristics as entities, each case would have to stand on its own bottom in its claim to citizenship, with attendant uncertainty

and increased burden of litigation in the federal courts. The result would be a great many additional cases being removed to or filed in the federal courts, both where there is or where there is not determined to be federal jurisdiction. In each one of these cases, the Court would have to determine whether the association has sufficient characteristics of an entity to be a citizen. This situation would result in unnecessary and wasteful increased cost of operation of the federal courts due to the increased work load, in the federal courts being distracted from more important questions, and in the increased cost of litigation, wasted time and harassment to litigants. Unincorporated associations' status as a citizen for diversity jurisdiction would be better granted by legislation rather than judicial decree, if granted at all, since a court decision could only leave many vexing questions unanswered, whereas legislation could provide comprehensive outlines for all cases.

CONCLUSION

For the reasons set forth hereinabove, the petition should be denied.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 652

UNITED STEELWORKERS OF AMERICA, AFL-CIO

Petitioner.

v.

R. H. BOULIGNY, INC.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITIONER'S REPLY TO BRIEF IN OPPOSITION

The court below ruled that no unincorporated association, regardless how complete its legal personality, can have a citizenship for diversity purposes. As we showed in the Petition, that holding is in direct conflict with decisions of several other circuits, the most recent being *Mason* v. *American Express Co.*, 334 F. 2d 392 (2d Cir. 1964).

The Company does not seriously dispute that the decision below, as written, conflicts with *Mason*. See Br. in Opp. p. 10. Instead, it argues that the court below might have reached the same result by different routes. The simple answer, of course, is that the court below did *not* adopt these alternative grounds, though they were advanced by the Company below. And we seek review of what the court *did* do, not what it *might have* done.

Nonetheless, we shall demonstrate that the points advanced here by the Company lack merit.

1. The Company refers, in its brief in opposition (p. 3), to the Union's "many" members in North Carolina. "Many," of course, is a relative term. However, lest the Court draw an erroneous impression, we wish to point out that the Union's North Carolina membership at the time this suit was filed constituted less than one-tenth of one percent of the Union's total membership.

2. The Company argues strenuously that an unincorporated association cannot be a citizen of a State unless it is "created" by the laws of that State. (Br. in Opp., pp. 3, 6-9, 10, 11-12.) Indeed, the Company even suggests that such "creation" is a Constitutional prerequisite for citizenship (*Id.*, pp. 7-8). But the Company nowhere explains the basis for this contention, and it is clear that it has no foundation.

The courts have had no difficulty concluding that natural persons are citizens of particular States, though they are not created by the laws of any State. And Congress has now declared that corporations have citizenships in States other than those of their creation, 28 U.S.C. § 1332(c). (The Company brands this latter development "paradoxical", Br. in Opp., p. 9; indeed on the Company's reasoning § 1332 (c) is unconstitutional).

Since the purpose of the diversity grant is to prevent prejudice to foreigners, the test of citizenship for diversity purposes is attachment, not creation. One is a "citizen," for diversity purposes, of the State to which he is most closely attached, and in which he is least likely to suffer regional prejudice. Thus, a natural person, though born in one State, may upon changing his domicil become a citizen of another. See, e.g., *Morris* v. *Gilmer,* 129 U. S. 315, 328 (1889). A labor union, like a corporation, is most closely attached to the State of its principal place of business, and accordingly

that is the place where, for diversity purposes, it is a citizen.[1]

The Company states that "This Court has never held for the purpose of establishing diversity jurisdiction that any association might be a citizen of a state merely because its principal place of business is located therein." (Br. in Opp., p. 7.) We think this statement is incorrect.[2] But in any event Congress, in the reports accompanying the 1958 amendments, expressed its view that the diversity statute had *always* been intended to make a corporation a citizen of the

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[1] The Brief in Opposition notes that the Union did not introduce evidence in support of its allegation that Pennsylvania is its principal place of business. The reason is simple: the motion to remand did not dispute this allegation. In any event, it is common knowledge that —whether measured by number of members, number of employees, location of headquarters, or any other standard—Pennsylvania is the Steelworkers' principal place of business.

[2] At the time this Court first held a corporation to be a citizen, corporations invariably incorporated in their principal place of business. Accordingly, though the Court used "State of incorporation" as a convenient formula to define a corporation's citizenship, this definition effectively made corporations citizens of their principal place of business as well. That the Court considered the latter factor at least equally important in determining citizenship is evident from its early decisions. Thus, in *Louisville, C. & C. R. R. Co.* v. *Letson,* 2 How. (43 U. S.) 495, 554 (1844) the Court stated:

> "A suit, then, brought by a citizen of one State against a corporation by its corporate name *in the State of its locality, by which it was created and where its business is done by any of the corporators who are chosen to manage its affairs,* is a suit, so far as jurisdiction is concerned, between citizens of the State where the suit is brought and a citizen of another State." (Emphasis supplied.)

And in *Marshall* v. *The Baltimore and Ohio Railroad Co.,* 16 How. (57 U. S.) 314, 326, 327 (1853), the Court emphasized that it was essential that corporations be deemed citizens of the state of their incorporation, to assure that an out-of-state plaintiff would not be left to the mercy of the State courts of "the State in which the defendant *resides,*" and of which the corporation's "trustees and representatives . . . are usually citizens."

State of its principal place of business. H. Rep. No. 1706, 85th Cong. 2d Sess. 4 (1958):

> "The underlying purpose of diversity of citizenship legislation (which incidentally goes back to the beginning of the Federal judicial system, having been established by the Judiciary Act of 1789) is to provide a separate forum for out-of-State citizens against the prejudices of local courts and local juries by making available to them the benefits and safeguards of the Federal courts. *Whatever the effectiveness of this rule, it was never intended to extend to local corporations, which, because of a legal fiction, are considered citizens of another State.* It is a matter of common knowledge that such incorporations are primarily initiated to obtain some advantage taxwise in the State of incorporation or to obtain the benefits of the more liberal provisions of the foreign State's corporation laws. Such incorporations are not intended for the prime purpose of doing business in the foreign State. It appears neither fair nor proper for such corporation to avoid trial in the State where it has its principal place of business by resorting to a legal device not available to the individual citizen." (Emphasis supplied.)

Those courts and commentators concluding that labor unions are citizens for diversity purposes have inevitably located that citizenship in the State of the union's principal place of business. *American Federation of Musicians* v. *Stein*, 213 F. 2d 679, 686 (6th Cir.) *cert. denied*, 348 U. S. 873 (1954); *Ex parte Edelstein*, 30 F. 2d 636, 640 (2d Cir.) (dissenting opinion), *cert. denied*, 279 U. S. 851 (1929); Comment, *Unions as Juridical Persons*, 66 Yale L.J. 712, 749 (1957); 3 Moore, *Federal Practice*, ¶ 17.25, pp. 1415-16 (2d Ed. 1963).

3. The Company advances two bases, not relied upon by the Court below, for distinguishing this case from *Puerto Rico*

v. *Russell & Co.*, 288 U. S. 476 (1933). We deal with them briefly.

(a) At page 5 of the brief in opposition, the Company quotes a paragraph of the *Russell* opinion which, it contends, demonstrates that *Russell* is inapplicable to "associations created in the United States." But that paragraph was discussed by the Second Circuit in *Mason* v. *American Express Co.*, 334 F. 2d 392, 398 (1964), and was regarded by that court as not precluding application of *Russell* to United States associations. Accordingly, if the court below had adopted the argument now advanced by the Company, its opinion—which already is in direct conflict with *Mason*—would have conflicted with *Mason* in still another respect.

(b) The Company states that this Court in *Russell* "cited with approval" the case of *Levering & Garrigues Co.* v. *Morrin*, 61 F. 2d 115 (2d Cir. 1933), *cert. granted on an unrelated ground and affirmed*, 289 U. S. 103 (1933), in which the Second Circuit held that a labor union could not be a citizen (Br. in Opp., p. 5). The portion of the *Russell* opinion to which Respondent refers is the following:

> "But status as a unit for purposes of suit alone, as in the case of a joint stock company, see Chapman v. Barney, 129 U. S. 677; Levering & G. Co. v. Morrin (C.C.A. 2d) 61 F. (2d) 115, 117, or a limited partnership, not shown to have the other attributes of a corporation, Great Southern Fire Proof Hotel Co. v. Jones, 177 U. S. 499; compare Thomas v. Ohio State University, 195 U. S. 207, has been deemed a legal personality too incomplete; what was but an association of individuals for so many ends and a juridical entity for only a few, was not easily to be treated as a single citizen." (288 U. S. at 480.)

This passage will not aid Respondent, for two reasons:

(1) *Levering* is categorized as involving an association which had "status as a unit for purposes of suit alone."

While this may have been an accurate description of the labor union's legal status in 1933, that status has of course changed completely in the intervening years. (See cases and legislation cited in the Petition, pp. 12-14.) The court below did not suggest that the modern labor union is not a complete juridical person. Indeed, it repeated without contradiction the district court's conclusion that the Union is "a juridical person as fully and completely as if it were organized as a corporation" (*Appendix* 5). The sole basis for the decision below was that, no matter how complete its legal personality, an unincorporated association cannot be a citizen for diversity purposes.

(2) *Levering,* in the quoted passage from *Russell,* is bracketed with *Chapman* v. *Barney,* which involved a joint stock company.[3] In the *Mason* case, which also involved a joint stock company, this passage was cited to the Second Circuit as evidence that *Russell* had not overruled *Chapman.* The Second Circuit concluded, however, that despite this passage *Chapman* was overruled by *Russell* (334 F. 2d 392, 398-99). Accordingly, had the court below adopted the Company's view that by this passage the *Russell* court was citing "with approval" *Chapman* and *Levering,* its opinion again would have conflicted with *Mason.*

4. The Company suggests that it is "premature" for the court to review the citizenship status of labor unions at this time, because the subject is being studied by the American Law Institute as part of a general review of the diversity statute (Br. in Opp., p. 12). But the wide divergence of opinions among the Institute's members on many problems relating to federal diversity jurisdiction (See 32 U.S.L. Week 2623-27) cautions against any assumption that there will be easy or quick legislative clarification. And this is particu-

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[3] Indeed, it has been suggested by one commentator that the Court in *Russell* was under the misapprehension that *Levering* involved a joint stock company. Comment, *Unions as Juridical Persons,* 66 Yale L.J. 712, 743 n. 180 (1957).

larly true of any proposal which would relate to labor unions. This Court has noted that legislation affecting labor unions is "to a marked degree, the result of conflict and compromise between strong contending forces and deeply held views on the role of organized labor in the free economic life of the Nation . . ." *Local 1976, United Bhd. of Carpenters* v. *NLRB,* 357 U. S. 93, 99-100 (1958). We believe the treatment accorded labor unions by some State courts is so vastly different from that accorded by the federal courts as to effect a difference in substantive rights, and we know that many management representatives share this view. Accordingly, any proposed legislation dealing with the allocation of jurisdiction would be treated as though it involved substantive rights, and would have, at best, a problematical fate. We submit that there is no justification for this Court delaying resolution of the highly important, unsettled question of law presented in this case, on the unlikely premise that legislative clarification might be forthcoming at some time in the future.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

UNITED STEELWORKERS OF AMERICA, AFL-CIO
Petitioner

v.

R. H. BOULDIN, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR PETITIONER

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 652

UNITED STEELWORKERS OF AMERICA, AFL-CIO
Petitioner

v.

R. H. BOULIGNY, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR PETITIONER

OPINIONS BELOW

The opinion of the United States District Court for the Western District of North Carolina (R. 7) is unreported. The opinion of the United States Court of Appeals for the Fourth Circuit (R. 12) is reported at 336 F. 2d 160.

JURISDICTION

The judgment of the Court of Appeals (R. 20) was entered on August 6, 1964. The petition for certiorari was filed in this Court on November 4, 1964, and granted on January 18, 1965 (R. 21). This Court has jurisdiction under 28 U.S.C. § 1254(1).

QUESTION PRESENTED

Whether the modern-day labor union—treated as a legal entity for virtually every other purpose—is to be treated as a legal entity with its own citizenship for purposes of the diversity jurisdiction of the federal courts?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article III, Section 2 of the Constitution of the United States provides, in pertinent part:

> "The judicial Power shall extend . . . to Controversies between . . . Citizens of different States . . ."

28 U.S.C. § 1332 provides, in pertinent part:

> "(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and is between—
>
> "(1) citizens of different states;"

28 U.S.C. § 1441(a) provides:

> "Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending."

STATEMENT OF THE CASE

On May 29, 1963, Respondent, R. H. Bouligny, Inc. ("the Company"), sued Petitioner, United Steelworkers of America ("the Union"), an unincorporated labor union, in the Superior Court of Mecklenburg County, North Carolina, alleging that it had been libelled in a leaflet published

by the Union. The complaint prayed for $100,000 compensatory damages and an additional $100,000 punitive damages (R. 1-3).

On June 18, 1963, the Union removed the case to the United States District Court for the Western District of North Carolina, pursuant to 28 U.S.C. § 1441(a). The removal petition recited that the Company is a North Carolina citizen (being incorporated and having its principal place of business in that State), that the Union is a Pennsylvania citizen (having its principal place of business in that State), and that accordingly the District Court had jurisdiction on the basis of diversity of citizenship between the parties (R. 4-5).

The Company moved to remand. It did not dispute that the Union's principal place of business is in Pennsylvania. It asserted, however, that the Union "is an unincorporated association and has members who are citizens of North Carolina," and that consequently "there is no diversity of citizenship" (R. 6).

The District Court's Opinion

The district court refused to remand. It found that the Union has members who are citizens of North Carolina, but "that the defendant union is a juridical person as fully and completely as if it were organized as a corporation, having as great unity of action and as much power centered in the governing officers, and that its principal office and place of business is in Pittsburgh, Pennsylvania" (R. 7).

The court chose to follow what is described as a "trend to treat unincorporated associations in the same manner as corporations and to treat them as citizens of the state wherein the principal office is located for jurisdictional purposes." It stated that "there appears to be no common sense reason for treating an unincorporated labor union differently from a corporation." While acknowledging that "the greater

number of cases still hold" that diversity is lacking if a labor union has a member whose citizenship is not diverse from that of the other party, the court described those cases as "poorer reasoned" than the trend which it was following (R. 7).

The Court of Appeals' Opinion

The Company obtained interlocutory review pursuant to 28 U.S.C. § 1292(b) (R. 11). The Court of Appeals reversed. It recited, and did not disturb, the district court's finding that the Union is "a juridical person as fully and completely as if it were organized as a corporation . . . and that its principal office and place of business is in Pittsburgh, Pennsylvania" (R. 13). It concluded, however, that no matter how complete an unincorporated association's legal personality, the citizenship of each of its members is controlling for diversity purposes.

This result, the court said, was dictated by the Supreme Court's opinions in *Chapman* v. *Barney*, 129 U.S. 677 (1889) and *Great Southern Fireproof Hotel Co.* v. *Jones*, 177 U.S. 449 (1900) stating that the rule attributing citizenship to corporations "must not be extended" to any other type of collective association (R. 14-15).

The Union argued below that the rigid rule of these early cases had been modified by the subsequent decision in *Puerto Rico* v. *Russell & Co.*, 288 U.S. 476 (1933), holding an unincorporated *Sociedad en Comandita* to have a citizenship distinct from that of its members for purposes of federal jurisdiction. The court below held, however, that *Russell* "furnishes no support whatsoever for such a position," because *Russell* interpreted the word "citizen" as it appears in the Organic Act, now 48 U.S.C. §§ 863, 864, and not as it appears in the diversity statute. The court found nothing in *Russell* to indicate that this Court "was consciously expanding federal diversity jurisdiction" (R. 15-17). The court acknowledged, however, that its reading of

Russell is in conflict with that of three other circuits (R. 17 and n. 3).

The court next stated that, "whatever basis there once was for the belief that *Russell* intended to lay down new principles for the determination of citizenship for diversity jurisdiction purposes, it was reversed by the passage of the 1958 amendment to the diversity statute" assigning dual citizenship to corporations. This resulted, the court said, for two reasons: first, since Congress had now specifically defined the citizenship of one type of artificial body—the corporation—the courts should no longer undertake to define the citizenship of other types; and second, labor unions "would be treated more favorably than corporations for diversity purposes" if they were assigned a single citizenship, for corporations now have two (R. 18).

The court noted that there is "informed sentiment" supporting the treatment of unincorporated associations such as labor unions as citizens of the State where their principal place of business is located (R. 19). Indeed, it "readily concede[d] that vis-a-vis a corporation it would be quite feasible to treat a modern labor union as a citizen for diversity purposes. But the question of policy is certainly not one for decision of an intermediate appellate court" (R. 19, n. 4).

SUMMARY OF ARGUMENT

The question presented in this case is whether a labor union which is a "juridical person as fully and completely as if it were organized as a corporation" (R. 7, 13) is, like a corporation, to be treated for diversity purposes as having a citizenship distinct from its members.

The court below has held that a labor union, unlike a corporation, may not remove an action to federal court on the ground of diversity of citizenship if it has a single member who is a citizen of the same state as the opposing party. Since most unions, like the petitioner, have at least a few

members in each of the fifty states, the decision below effectively bars them from ever removing cases to federal court on diversity grounds. We believe this decision undermines the purpose of the diversity jurisdiction and is inconsistent with prior decisions of this Court.

I.

The purpose of the diversity jurisdiction is to prevent local prejudice against an outsider forced to litigate in the domicile of his adversary. As Alexander Hamilton explained in Federalist No. 80, the federal courts are "the proper tribunals for the determination of controversies between different states and their citizens," for in such cases "the state tribunals cannot be supposed to be impartial." The Judicial Conference recently found that "there is a great bulk of expert opinion from those who litigate in the courts that local prejudice continues to exist, and that the federal courts are in truth a strong protection against it."

There can be no doubt that labor unions today encounter severe regional hostility when they seek to organize in certain parts of the country. Outside of the heavily industrialized states, labor unions are regarded as "foreigners." Appeals to regional prejudice are a popular device for opposing their organizing attempts (see, e.g., the materials contained in the Appendix hereto), and state courts have in fact permitted abuses of judicial processes as a result of that prejudice.

To characterize a union as a "citizen" of an unfriendly state, simply because it has a few members there, is to indulge the cruelest of fictions. For a local jury can be expected to realize that the astronomical judgment it is invited to render against the union (frequently including substantial punitive damages) will be paid not by the union's handful of local members, but from its general treasury. This temptation to assist a local citizen at the expense of the distant treasury of an unpopular defendant constitutes the very local preju-

dice which the removal procedure is designed to mitigate or prevent.

The considerations are not, of course, one-sided. A foreign plaintiff who must sue a union in the union's habitat will be equally anxious to secure the protections of the federal courts. Some of the courts of appeals, responsive to the plaintiff's plight, have permitted him to sue the union as a "class," and to name as representatives of the class only individuals whose citizenship is diverse from his own. These courts have heralded this device as an appropriate means to prevent labor unions from enjoying "virtual immunity from suit in federal courts," and as necessary "to prevent a failure of justice." But these decisions serve to render the decision below all the more unjust. For the effect is to give the plaintiff absolute power to determine the forum in which his case will be heard. If he prefers the federal forum, he will sue the union as a "class." If, on the other hand, he prefers the State forum, he will sue the union as an entity, and, under the decision of the court below, the union will be powerless to remove. Surely this inequity is a far greater "failure of justice."

The court below recognized that it would be desirable to treat a labor union as a citizen of its principal place of business. It thought, however, that it was precluded from doing so by certain decisions of this Court rendered at the turn of the century. The court below failed to recognize that a more recent decision of this Court provides the governing standard for determining the citizenship of unincorporated associations. Under that standard, labor unions are entitled to treatment as citizens for diversity purposes, distinct from the citizenships of their members.

II.

In 1933, this Court set forth the standards governing the citizenship of unincorporated associations for purposes of federal jurisdiction. *Puerto Rico* v. *Russell & Co.*, 288

U. S. 476. If an association is endowed with a "complete legal personality" (288 U. S. at 479) and is "consistently regarded as a juridical person" (*Id.* at 481), there is "no adequate reason for holding that [it] has a different status for federal jurisdiction than a corporation. (*Id.* at 482). The Court distinguished its earlier decisions denying citizenship to certain associations (on which the court below relied) on the ground that the associations involved in those cases had lacked many of the attributes of legal personality, and "what was but an association of individuals for so many ends and a juridical entity for only a few, was not easily to be treated as if it were a single citizen" (*Id.* at 480).

The court below, apparently acknowledging that the modern labor union has a complete legal personality, nonetheless refused to follow *Russell* for two reasons. Neither is tenable.

First, the Court below dismissed *Russell* as irrelevant, because it involved the determination of federal jurisdiction under the Organic Act of Puerto Rico, not the diversity statute. It found nothing in the *Russell* opinion to indicate that this Court "was consciously expanding federal diversity jurisdiction." This analysis will not survive a reading of the *Russell* opinion. For this Court treated the questions under the Organic Act and the diversity statute as indistinguishable, and indeed couched its entire opinion as an analysis of the diversity precedents. And in a subsequent opinion, this Court characterized *Russell* as involving "diversity of citizenship on which jurisdiction of the federal courts depended." *Puerto Rico* v. *Russell & Co.*, 315 U. S. 610, 614 (1942).

The second basis suggested by the court below for not following *Russell* was that "whatever basis there once was for the belief that *Russell* intended to lay down new principles for diversity jurisdiction purposes, it was reversed by the passage of the 1958 amendment to the diversity statute." This amendment declared that corporations shall be deemed

citizens of both the state of their incorporation and the state of their principal place of business. It was enacted to cure the anomaly that corporations could obtain diversity jurisdiction in their home state by virtue of foreign incorporation. Neither the *Russell* decision, nor the status of unincorporated associations generally, was considered by Congress, and accordingly there is absolutely no basis for concluding that Congress "reversed" *Russell* by adopting the 1958 amendments.

III.

The modern-day labor union clearly has a "complete legal personality" entitling it to treatment as a citizen under the *Russell* test. "[I]n every way the union acts as a business entity, distinct from its members. No organized corporation has greater unity of action, and in none is more power centered in the governing executive bodies." *United Mine Workers* v. *Coronado Coal Co.*, 259 U. S. 344, 385-86 (1922). "Responsive to the actualities of our industrial society, in which unions as such play the role that they do, the law regards a union as a self-contained, legal personality exercising rights and subject to responsibilities wholly distinct from its individual members." *International Association of Machinists* v. *Street*, 367 U. S. 740, 808 (1961) (dissenting opinion of Mr. Justice Frankfurter).

Whatever conceivable doubt there might previously have been as to the completeness of the labor union's legal personality surely was removed with the enactment of the Labor-Management Reporting and Disclosure Act of 1959, 29 U. S. C. §§ 401 et. seq. By that Act, Congress filled out the labor union's legal personality so that it is virtually indistinguishable from the corporation's in every respect.

The characteristics of the modern-day labor union are "much more impressive" than those of the association involved in *Russell* "to compel recognition of unincorporated unions as juridical persons equivalent to corporations for

purposes of citizenship in cases in which jurisdiction is founded upon diversity of citizenship." *American Federation of Musicians* v. *Stein*, 213 F. 2d 679, 687 (6th Cir.), *cert. denied* 348 U. S. 873 (1954). Indeed, the district court in the present case found (and the Court of Appeals did not disturb its finding) that the union "is a juridical person as fully and completely as if it were organized as a corporation" (R. 7, 13).

IV.

The question remains, of what state is a labor union a citizen? Since the purpose of diversity jurisdiction is to avoid local prejudice, a labor union should be deemed a citizen of the State of its principal place of business, for that is where it is least likely to suffer such prejudice. No matter what factors are taken into account in determining "principal place of business," it is clear that the union involved in this case is a citizen of Pennsylvania.

ARGUMENT

> "For almost a century, in ascertaining whether there is the requisite diversity of citizenship to confer jurisdiction on the federal courts, we have looked to the domicil of a corporation, not that of its individual stockholders, as controlling." *Puerto Rico* v. *Russell & Co.*, 288 U. S. 476, 479 (1933).

The question presented in this case is whether a labor union which is a "juridical person as fully and completely as if it were organized as a corporation" (R. 7, 13) is, like a corporation, to be treated for diversity purposes as having a citizenship distinct from its members'.

The court below has held that a labor union, unlike a corporation, may not remove an action to federal court on the ground of diversity of citizenship if it has a single member

who is a citizen of the same state as the opposing party. Since most unions, like petitioner, have at least a few members in each of the fifty states, the decision below effectively bars them from ever removing cases to federal court on diversity grounds. We believe this decision undermines the purpose of the diversity jurisdiction and is inconsistent with prior decisions of this Court.

I. TO DENY LABOR UNIONS ACCESS TO THE FEDERAL COURTS ON DIVERSITY GROUNDS—AS THE DECISION BELOW DOES—WOULD UNDERMINE THE PURPOSE FOR WHICH THE DIVERSITY JURISDICTION WAS CREATED.

The decision below, by effectively denying labor unions access to the federal courts on diversity grounds, undermines the very purpose for which the diversity jurisdiction was created—avoidance of local prejudice. As Alexander Hamilton explained in Federalist No. 80, the federal courts are "the proper tribunals for the determination of controversies between different states and their citizens," for in such cases "the state tribunals cannot be supposed to be impartial."[1] Fear of local prejudice survives today as the principal justification for preservation of the diversity jurisdiction. Thus, in 1951, the Committee on Jurisdiction and Venue of the Judicial Conference, opposing suggestions that diversity jurisdiction be abolished, explained:

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[1] See, to the same effect, *Martin* v. *Hunter's Lessee*, 14 U. S. (1 Wheat.) 304, 347 (1816):

> "The constitution has presumed (whether rightly or wrongly, we do not inquire) that state attachments, state prejudices, state jealousies, and state interests, might sometimes obstruct, or control, or be supposed to obstruct or control, the regular administration of justice. Hence, in controversies . . . between citizens of different states . . . it enables the parties, under the authority of Congress, to have the controversies heard, tried, and determined before the national tribunals."

See also, *Dodge* v. *Woolsey*, 59 U. S. (18 How.) 331, 354 (1856).

> "The question involved is not a theoretical one, but one of great practical significance. To deny the right to resort to the Federal courts means that in controversies between citizens of different states, one must seek justice in the courts of the State of his adversary where he will find, in many of the States, that trial by jury has been stripped of many of its safeguards and the judge has been denied the common-law powers necessary to the proper administration of justice. . . . To require a nonresident to try his case in such a tribunal is not only to turn him over to the tender mercies of a local jury, without power in the presiding judge to counteract the appeals to prejudice of local counsel, it is also to deny to him the sort of trial by jury which as a citizen of the United States he is entitled to have in the Federal courts . . .
>
> ". . . [T]here is a great bulk of expert opinion from those who litigate in the courts that local prejudice continues to exist, and that the Federal courts are in truth a strong protection against it."[2]

There have been suggestions by some commentators—though rejected by Congress and the Judicial Conference—that corporations no longer suffer local prejudice. But surely no similar claim can be made about labor unions. The labor movement, from its birth, has been predominantly a regional development. Its strength, its support, and its acceptance have come mainly from the heavily industrial states. Elsewhere, labor unions are still regarded as "foreigners." They have been required, by the extensive relocation of businesses to previously rural parts of the country during the past two decades, to venture into these areas in attempts to organize employees, and they have encountered

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[2] Attached to S. Rep. No. 1830, 85th Cong. 2d Sess. (1958), and printed in 1958 U. S. Code Congressional and Administrative News, 3114 at 3116-17.

widespread community hostility. We have assembled in the Appendix to this brief a few leaflets and newspaper editorials typifying the kinds of appeals to regional prejudice which labor unions encounter. Another representative situation was described by the NLRB in *Utica-Herbrand Tool Div.*, 145 NLRB 1717 (1964). A union's organizing attempt was opposed not only by the employer, but by the mayor, policemen, state legislators, the newspaper, the radio station and citizens' committees. The union representatives were called "outside agitators." Employees were warned that unions had made "distress areas" of other parts of the country, and that other companies would relocate in the area only "if we keep the climate right." Small wonder that labor unions fear local prejudice in such areas and seek to remove their lawsuits to the federal courts![3]

Fortunately, most activities of labor unions are regulated by federal law, and thus do not give rise to litigation necessitating removal on diversity grounds.[4] However, the few cases which can arise exclusively under state law—allega-

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[3] For a demonstration of how regional prejudice in such areas can affect the quality of justice received by labor unions in state courts, see *State Court Injunctions*, Report of the Subcommittee on Labor and Public Welfare, S. Doc. No. 7, 82d Cong., 1st Sess. (mislabeled 81st Cong. 2d Sess.) 6-12, 92-118 (1951) (finding a prevalence in the southeast of "abuse of injunctions" against labor unions). This report is summarized and discussed in Comment, *Unions as Juridical Persons*, 66 Yale L.J. 712, 745 and n. 191 (1959). See also Petition for Certiorari in *Walker* v. *North Carolina*, October Term, 1960, No. 110 (certiorari denied, 364 U. S. 832).

[4] Contract actions presumably are removable on "federal question" grounds by virtue of Section 301 of the Labor Management Relations Act, 29 U.S.C. §185; most suits involving internal union affairs are now brought under the Labor Management Reporting and Disclosure Act of 1959, 29 U.S.C. § 401 *et seq.*; and most "non-violent" torts are preempted to the exclusive jurisdiction of the National Labor Relations Board (see, e.g., *Garner* v. *Teamsters Union*, 346 U. S. 485 (1953); *San Diego Building Trades Council* v. *Garmon*, 359 U. S. 236 (1959); *Local No. 207* v. *Perko*, 373 U. S. 701 (1963)).

tions of violence or defamation[5]—are those presenting the most inflammatory issues, and which are most likely to excite regional hostilities. Suits of this type most frequently arise —as in this case—when a union attempts to organize in a generally unorganized section of the country. Community emotions will have been raised to fever pitch. The complaint will ask huge sums in actual damages, together with enormous punitive damages. The union, far from home and virtually friendless, will, in the words of the Judicial Conference, be "turn[ed] . . . over to the tender mercies of a local jury, without power in the presiding judge to counteract the appeals to prejudice of local counsel."

To characterize the union in these circumstances as a "citizen" of the forum state, simply because it has a few members there, is to indulge the cruelest of fictions. Here, for example, respondent, a prominent local corporation, has sued the petitioner union for $100,000 actual and $100,000 punitive damages. It can be anticipated that a local jury will realize that any verdict it renders will be paid not by the union's handful of local members, but from its general treasury in Pittsburgh. This temptation to assist a local citizen at the expense of the distant treasury of an unpopular defendant constitutes the very local prejudice which the removal procedure is designed to mitigate or prevent.[6]

Petitioner's plight in this case is one which is recurring with increasing frequency. The "six-figure" damage suit

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[5] There is a conflict among the lower courts as to whether defamation actions are, in some circumstances, preempted. *Compare Meyer* v. *Joint Council 53, Teamsters,* — Pa. —, 58 LRRM 2183 (1965) (not preempted) *with Linn* v. *United Plant Guard Workers,* 337 F. 2d 68 (6th Cir. 1964) (preempted). Indeed, once the jurisdictional question in the instant action is resolved, petitioner will file its responsive pleading, introducing facts which, it will allege, demonstrate that this action is preempted.

[6] For a representative example of the tendency of unfriendly juries to award punitive damages against labor unions, see *United Automobile Workers* v. *Russell,* 356 U. S. 634, 652 n. 10, 657-58 (1958) (dissenting opinion of Chief Justice Warren).

has become a popular weapon to scare off union organizing attempts in unorganized areas. There are at least seven other libel suits against labor unions, each seeking astronomical damages, now pending on removal in the district courts of the Fourth Circuit alone. In each, the union removed the case to federal court on the ground of diversity of citizenship, and in each a motion to remand is being held in abeyance pending final disposition of the present case.[7]

The considerations involved are not, of course, one-sided. Just as there are some areas of the country in which union defendants fearful of local prejudice wish to remove their cases to the federal courts, so there are other areas in which plaintiffs, fearful of local prejudice, would like to sue unions in the federal courts on diversity grounds.[8] Reversal of the

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[7] The following table lists the other seven pending cases, and the damages sought in each:

Case and Docket No.	*Jurisdiction*	*Damages Sought*
White v. United Steelworkers of America, Civ. Ac. No. 1798	W.D. N.C.	$200,000
Braxton v. Int'l Ladies Garment Workers Union, Civ. Ac. Nos. 596-97	E.D. N.C.	$1,000,000
Haddock v. Int'l Ladies Garment Workers Union, Civ. Ac. No. 598	E.D. N.C.	$1,000,000
Horne v. Int'l Ladies Garment Workers Union, Civ. Ac. No. 599	E.D. N.C.	$1,000,000
Kindred v. Upholsterers' Int'l Union, et al., Civ. Ac. No. 64-C-45R	W.D. Va.	$125,000
Rowe Furniture Corp. v. Upholsterers' Int'l Union, et al., Civ. Ac. No. 64-C-46R	W.D. Va.	$300,000
Tingler v. Upholsterers Int'l Union, et al., Civ. Ac. No. 64-C-47R	W.D. Va.	$75,000

[8] For example, in the single district within the Fourth Circuit which sits in a heavily industrialized area, a libel action against a labor union was instituted recently in federal court by the *plaintiff*, alleging diversity of citizenship. The action was dismissed for lack of jurisdiction on October 21, 1964, on the basis of the Fourth Circuit's decision in the instant case. *Gray* v. *International Typographical Union*, Civ. Ac. No. 15676 (D. Md.).

decision below would of course facilitate avoidance of local prejudice in both these situations.

Anomalously, the court below has held that a plaintiff who wants to bring a labor union into federal court on diversity grounds can do so, simply by suing the union as a "class" rather than as an entity, and naming as representatives of the class only individuals whose citizenship is diverse from the plaintiff's. *Tunstall* v. *Bhd. of Locomotive Firemen,* 148 F. 2d 403 (4th Cir. 1945). This device has been widely heralded as a means to prevent labor unions from enjoying "virtual immunity from suit in federal courts." *Calagaz* v. *Calhoun,* 309 F. 2d 248, 252 (5th Cir. 1962). See also *Montgomery Ward & Co.* v. *Langer,* 168 F. 2d 182 (8th Cir. 1948). Cf. *Underwood* v. *Maloney,* 256 F. 2d 334 (3rd Cir. 1958).

But this expansion of diversity jurisdiction to permit *plaintiffs* to bring labor unions into federal court, though desirable in itself, renders the present decision of the court below all the more unfair. For it gives the plaintiff unprecedented power to determine the forum in which the case will be tried. If he wants to be in federal court, he will utilize the "class action" device to create diversity jurisdiction. If, on the other hand, he prefers to be in the state court, he need only sue the union there as an entity, and, under the decision of the court below, the union will be powerless to remove.

It has been said that the development permitting plaintiffs to sue unions in federal court on diversity grounds was necessary "to prevent a failure of justice." *Calagaz, supra,* at p. 252. But surely equity dictates that the labor union have access to the federal courts equally with its adversaries in litigation. The decision of the court below, denying that equal access, countenances a far greater "failure of justice."

The court below recognized that there is "informed sentiment" supporting the treatment of unincorporated associa-

tions such as labor unions as citizens of the State where the principal place of business is located. (R. 19). Indeed, it "readily concede[d] that vis-a-vis a corporation it would be quite feasible to treat a modern labor union as a citizen for diversity purposes." (R. 19, n. 4). It reasoned, however, that "the question of policy is certainly not one for decision of an intermediate appellate court." (*Ibid*).

We shall show, in the remainder of this brief, that treatment of labor unions for diversity purposes as citizens of the state of their principal place of business is warranted, indeed dictated, by prior decisions of this Court.

II. AN UNINCORPORATED ASSOCIATION POSSESSING A COMPLETE LEGAL PERSONALITY HAS A CITIZENSHIP FOR DIVERSITY PURPOSES DISTINCT FROM THE CITIZENSHIPS OF ITS MEMBERS.

Article III, Section 2 of the Constitution extends the federal judicial power to "controversies . . . between Citizens of different States." Congress, beginning with the first Judiciary Act in 1789, has consistently extended jurisdiction over this class of cases to the lower federal courts.

During these nearly two centuries, the Supreme Court has recurrently been called upon to define the treatment of "collective" entities for diversity purposes. Its response, as we shall briefly sketch it at pp. 18-22, *infra*, has not been constant. In the early days, the Court refused to acknowledge that any artificial entity—even a corporation—could have a citizenship distinct from that of the natural persons who created and ran it. By the 1840's, the realities of the Industrial Revolution forced the Court to treat corporations as citizens, but a steadfast refusal to extend that treatment to any unincorporated associations persisted through the early 1900's. It was not until 1933, in *Puerto Rico* v. *Russell & Co.* 288 U. S. 476 (1933), that the Court substituted analysis for labels, and articulated a meaningful doctrine

governing the citizenship of unincorporated associations: if such an association has a "complete legal personality," like a corporation's, "we see no adequate reason for holding that [it] has a different status for purposes of federal jurisdiction than a corporation" (288 U. S. at 482).

It is our thesis that *Russell* controls the decision in this case. Since the modern day labor union has a "complete legal personality" (as we show in Part III, herein) it has a citizenship distinct from its members' for diversity purposes.

The *Russell* opinion was not written on a clean slate. It discussed and harmonized a century and a half of prior decisions involving the treatment of collective organizations under the diversity grant. Accordingly, it is helpful to an understanding of the *Russell* opinion to first trace briefly that history.

A. The Treatment of Collective Associations Under the Diversity Grant Prior to *Puerto Rico* v. *Russell*.

This Court was first asked to determine whether a collective organization could have a citizenship distinct from its members in 1809, in *Bank of the United States* v. *Deveaux*, 9 U. S. (5 Cranch) 61. It held that a corporation could not be a citizen, and that, for diversity purposes, the courts must look to the citizenship of each of its shareholders:

> "That invisible, intangible, and artificial being, that mere legal entity, a corporation aggregate, is certainly not a citizen. . . ." (9 U. S. at 86).

While this decision did not, of course, survive, it was a predictable result for its times. Collective organizations—even corporations—had not yet assumed the importance which the Industrial Revolution would assign them. The common law had developed as a law of natural persons, and it was to be expected that the law would resist the at-

tribution of personal qualities to impersonal bodies. As this Court said, not so long ago, of the *Deveaux* opinion:

> "More than once [Chief Justice] Marshall had difficulty in transferring to corporations or other institutions legal conceptions and relations shaped in nomenclature and in fact from normative evolution in relation to persons of flesh and blood.
>
> "See, e.g., *Bank* v. *Deveaux,* 5 Cranch 61, where he was unable to adapt the concept of corporate 'inhabitancy,' applied in decisions he cited, for fitting the corporation into the constitutional scheme of diversity jurisdiction. His individualistic solution brought difficulties which lasted for decades." *United States* v. *Scophony Corp.,* 333 U. S. 795, 802-03, n. 10 (1948).

Deveaux was expressly overruled in 1844, in *Louisville, C. & C. R. R. Co.* v. *Letson,* 43 U. S. (2 How.) 495. The Court, explaining that the corporation engages in activities remote from the individuals who create and run it, concluded that it was a citizen of the chartering state.

This decision was so revolutionary in its attribution of personal qualities to impersonal bodies that it met with considerable disfavor from certain members of the Court. McGovney, *A Supreme Court Fiction,* 56 Harv. L. Rev. 853, 885-86. Accordingly, in 1853, the Court found a solution which at once satisfied the "naturalists" and the realists. It declared, in *Marshall* v. *The Baltimore & Ohio Railroad Co.,* 57 U. S. (16 How.) 314, that a corporation is not a citizen, thus satisfying the naturalists, but held that for diversity purposes each of its shareholders would be conclusively presumed to be a citizen of the chartering state. The result, of course, was exactly the same. And the Court made quite clear why that result was essential:

> "The necessities and conveniences of trade and business require that such numerous associates and stockholders should act by representation, and have the fac-

> ulty of contracting, suing and being sued in a fictitious or collective name. . . .
>
> "Nor is it reasonable that representatives of numerous unknown and ever-changing associates should be permitted to allege the different citizenship of one or more of these stockholders, in order to defeat the plaintiff's privilege [to sue in federal court]. It is true that these stockholders are corporators, and represented by this 'juridical person,' and come under the shadow of its name. But for all the purposes of acting, contracting, and judicial remedy, they can speak, act, and plead, only through their representatives or curators. . . .
>
> "The right of choosing an impartial tribunal is a privilege of no small practical importance, and more especially in cases where a distant plaintiff has to contend with the power and influence of great numbers and the combined wealth wielded by corporations in almost every state. It is of importance also to corporations themselves that they should enjoy the same privileges, in other states, where local prejudices or jealousies might injuriously affect them."

The corporation thus attained the status of a "citizen" for diversity purposes as the climax of an evolving body of law treating it as a juridical person for other purposes.

In three decisions around the turn of the century, the Supreme Court refused to extend "citizenship" to certain unincorporated associations. *Chapman* v. *Barney,* 129 U. S. 677 (1889) (joint stock association); *Great Southern Fire Proof Hotel Co.* v. *Jones,* 177 U. S. 449 (1900) (limited partnership); *Thomas* v. *Ohio State University Board of Trustees,* 195 U. S. 207 (1904) (college board of trustees). The opinions in these cases were notably devoid of any explanation as to *why* unincorporated associations should be treated differently than corporations. The fullest statement,

which appears in *Great Southern Fire Proof*, simply stated the proposition as an *ipse dixit*:

> "The rule that for purposes of jurisdiction and within the meaning of the clause of the Constitution extending the judicial powers of the United States to controversies between citizens of different states, a corporation was to be deemed a citizen of the state creating it, has been so long recognized and applied that it is not now to be questioned. No such rule, however, has been applied to partnership associations although such associations may have some of the characteristics of a corporation.
>
> * * *
>
> "That a limited partnership association created under the Pennsylvania statute may be described as a 'quasi corporation,' having some of the characteristics of a corporation, or as a 'new artificial person,' is not a sufficient reason for regarding it as a corporation within the jurisdictional rule heretofore adverted to. *That rule must not be extended. We are unwilling to extend it so as to embrace partnership associations.*" (177 U. S. at 456, 457; emphasis supplied.)

The Second Circuit has recently had occasion to note, and criticize, the lack of any explanation in these cases for the result reached. *Mason* v. *American Express Co.*, 334 F. 2d 392 (2d Cir. 1964). In its view, the Court made incorporation the *sine-qua-non* for citizenship "without making any effort to analyze the rationale of Marshall v. B. & O. R.R. in order to determine whether the reasons for extending citizenship to a corporation might apply with equal force to a joint stock association. This use of labels in place of a careful analysis was particularly ironic in view of the admonition in the Marshall opinion that 'it is not reasonable that those who deal with such persons [persons doing business through corporations] should be deprived of a val-

uable privilege by a syllogism, or rather sophism, which deals subtly with words and names, without regard to the things or persons they are used to represent.' 57 U. S. at 327-28." (334 F. 2d at 395-96). The Second Circuit concluded that the absence of any rationale for the doctrine making incorporation the test of citizenship "forewarned of an eventual abandonment of it by the Court which handed it down" (334 F. 2d at 395).

That abandonment came with this Court's decision in *Puerto Rico* v. *Russell,* 288 U. S. 476 (1933).

B. The Controlling Decision: *Puerto Rico* v. *Russell.*

In *Puerto Rico* v. *Russell & Co.,* 288 U. S. 476 (1933), this Court held that an unincorporated Puerto Rican "sociedad" had a unique citizenship, independent of that of its members, for purposes of federal jurisdiction. It reached this conclusion after an extended analysis of the Court's prior decisions, and the shaping of a doctrine to govern the citizenship of unincorporated associations.

At the outset, *Russell* made clear that the Supreme Court had accorded "citizenship" to corporations because of their "complete legal personality" and not because of any magic surrounding the act of incorporation:

> "For almost a century, in ascertaining whether there is the requisite diversity of citizenship to confer jurisdiction on the federal courts, we have looked to the domicil of a corporation, not that of its individual stockholders, as controlling. [Citing cases]. In its final form this rule of jurisdiction was stated in terms of a 'conclusive presumption' that the stockholders are citizens of the state of the corporate domicil [citing cases], *but even those who formulated the rule found its theoretical justification only in the complete legal personality with which corporations are endowed.* Fictitious that personality may be, in the sense that the fact that the corporation is composed of a plurality of individu-

> als, themselves legal persons, is disregarded, but it is a fiction created by law with intent that it should be acted on as if true. . . . *This treatment of the aggregate for other purposes as a person distinct from its members, with capacity to perform all legal acts, made it possible and convenient to treat it so for purposes of federal jurisdiction as well.*" (288 U. S. at 479-80; emphasis supplied)

Having thus enunciated the test of "citizenship"—the existence of a "complete legal personality"—the Court had to deal with its prior, *ipse dixit*, decisions involving unincorporated associations. This was done not by expressly overruling those cases, but by distinguishing them on the ground that the particular unincorporated associations there involved had had legal personalities "too incomplete" to warrant treatment as a "single citizen":

> "But status as a unit for purposes of suit alone, as in the case of a joint stock company, see Chapman v. Barney, 129 U. S. 677; Levering & G Co. v. Morrin, (C.C.A. 2d) 61 F. (2d) 115, 117, or a limited partnership, not shown to have the other attributes of a corporation, Great Southern Fire Proof Hotel Co. v. Jones, 117 U. S. 499; compare Thomas v. Ohio State University, 195 U. S. 207, has been deemed *a legal personality too incomplete; what was but an association of individuals for so many ends and a juridical entity for only a few, was not easily to be treated as if it were a single citizen.*" (288 U. S. at 480, emphasis supplied.)

The Court then listed the characteristics of the sociedad which constituted a "complete legal personality." These characteristics are of two types:

> (1) *The law permits the sociedad to act as an entity in the performance of its functions.* Specifically, it "is created by articles of association filed as public

records," and it "may contract, own property and transact business, sue and be sued in its own name and right" (288 U. S. at 481).

(2) *In internal matters, the law recognizes the sociedad as something more than, and distinct from, its individual members.* Specifically, it "endures . . . regardless of the death or withdrawal of individual members"; its members "are not primarily liable for its acts and debts"; it functions through managers in whom "powers of management" are vested; and its creditors are preferred with respect to its assets over those of its individual members (288 U. S. at 481).

Having listed these characteristics of the sociedad, the Court concluded:

> "These characteristics under the Codes of Puerto Rico give content to their declaration that the sociedad is a juridical person. That personality is so complete in contemplation of the law of Puerto Rico that we see no adequate reason for holding that the sociedad has a different status for purposes of federal jurisdiction than a corporation organized under the law." (288 U. S. at 482).

Thus *Russell* clearly establishes the test for determining when an unincorporated association has a unique citizenship for diversity purposes. If an association is endowed with a "complete legal personality" (288 U. S. at 479) and is "consistently regarded as a juridical person" (*Id.* at 481), there is "no adequate reason for holding that [it] has a different status for federal jurisdiction than a corporation" (*Id.* at 482). On the other hand, an association which, though suable as an entity, lacks other attributes of a juridical entity, must be deemed a citizen of each of the states in which it has members, because "what [is] but an association of individuals for so many ends and a juridical entity

for only a few, [is] not easily to be treated as if it were a single citizen" (*Id.* at 480).

C. The Import of *Puerto Rico* v. *Russell*.

The *Russell* opinion—with its emphasis on the "personality" of unincorporated associations—represents the final abandonment of the notion that the law recognizes only "natural persons." The Court referred to a corporation as a "person distinct from its members" (288 U. S. at 480) and to the sociedad as a "juridical person" (288 U. S. at 482), and concluded that precisely because they are "persons"—"with capacity to perform all legal acts" (288 U. S. 480)—it is "possible and convenient to treat [them] so for purposes of federal jurisdiction as well" *(Ibid.)*.

To the *Russell* court, it was sufficient that an association has a complete legal "personality" to warrant its treatment identically to natural persons for diversity purposes. Accordingly, the court did not deem it necessary to relate its conclusion to the purposes of the diversity jurisdiction.

It is clear, however, that *Russell* perfectly effectuates the purpose of the diversity jurisdiction. We have earlier described that purpose: to prevent prejudice to an outsider forced to litigate in the domicile of his adversary. A collective association may be subjected to just such prejudice, even though it has local members, if it has a "personality" so distinct from its members that their presence will not temper prejudice toward the association as an entity.

The law's assignation of legal personality to an association is a response to the fact that people who deal with the association recognize it as an entity. "The essential difference" in the legal treatment of corporations before and after the Industrial Revolution "was not a matter of technical legal construction, but *a way of looking at corporations.* Men's minds had become habituated to corporate activities . . ." *Neirbo Co.* v. *Bethlehem Corp.*, 308 U. S. 165, 169-70 (1939) (emphasis supplied). "The long, tortuous evolu-

tion of the methods whereby foreign corporations gained access to courts or could be brought there, is the history of judicial groping for a reconciliation between *the practical position achieved by the corporation in society* and a natural desire to confine the powers of these artificial creations." *Id.* at 169 (emphasis supplied).

The completeness of an association's "legal personality" is a reliable barometer of the extent to which the public views it as an entity distinct from its members. Accordingly it is a useful means for determining whether an association is likely to suffer local prejudice despite the presence of local members. The *Russell* test of citizenship—completeness of legal personality—thus is neatly designed to effectuate the purpose of the diversity jurisdiction.

D. The Cases Since *Puerto Rico* v. *Russell*.

This Court has not decided any case since *Russell* involving the attribution of citizenship to an unincorporated association. Four courts of appeals have read *Russell* as establishing the governing rule for determining the citizenship of unincorporated associations, and as impliedly overruling the *ipse dixit* of this Court's earlier cases. Under the holdings of these courts, an unincorporated association with a "complete legal personality" has, for diversity purposes, a citizenship distinct from its members. *Mason* v. *American Express Co.*, 334 F. 2d 392 (2d Cir. 1964); *American Federation of Musicians* v. *Stein*, 213 F. 2d 679 (6th Cir.) *cert. denied* 348 U. S. 873 (1954); *Swan* v. *First Church of Christ*, 225 F. 2d 745 (9th Cir. 1955); *Van Sant* v. *American Express Co.*, 169 F. 2d 355 (3d Cir. 1947).

The reasoning of these courts is exemplified by the following excerpts from the Second Circuit's decision in *Mason*, rendered a month before the decision below:

> "It is our considered judgment . . . that the Supreme Court has abandoned the artificial and mechanical rule of Chapman v. Barney in favor of a more flexible test

for capacity for citizenship, a test which demands that consideration be given to whether an organization's essential characteristics sufficiently invest it, like a corporation, with a complete legal personality distinct from that of the members it represents . . .

* * *

"[O]ur refusal to regard Chapman v. Barney as controlling law today stems primarily from our belief that the Supreme Court, some forty years after Chapman v. Barney, decided to depart from it . . .

* * *

"In 1933 the Supreme Court in Puerto Rico v. Russell & Co., supra, decided to treat a Puerto Rican business organization as a citizen for jurisdictional purposes despite the fact that it was not a corporation; and although the break with the past there achieved was not as clean as it might otherwise have been, since the court cited Chapman v. Barney without explicitly overruling it, we are nevertheless satisfied that the break was a clear one . . .

* * *

"This systematic appraisal of an organization's essential features under the law of its creation, in order to determine whether these features entitled it to the same treatment as a separate juridical person for diversity purposes as that accorded a corporation, must be regarded as representing a clear departure from Chapman v. Barney's basic assumption that only corporations were entitled to treatment as separate citizens for diversity purposes, and a departure from that case's consequent mechanical determination of the issue of capacity for citizenship on the basis of whether a state had or had not pinned on an organization the corporate label." (334 F. 2d at 393, 395, 396, 396-97).

Commentators, too, have viewed *Russell* as modifying the prior treatment of unincorporated associations for diversity purposes. Comment, *Unions as Juridical Persons,* 66 Yale L.J. 712, 742-49 (1957); 3 Moore, Federal Practice § 17.25, pp. 1413-14 (1963); Note, 33 Colum. L. Rev. 540, 541 (1933).

Indeed, two recent commentaries noting the conflict between the decision below and the Second Circuit's *Mason* decision, have concluded that *Mason*—and not the decision below—reflects the correct interpretation of *Russell,* and represents the proper effectuation of the purposes of diversity jurisdiction. Note, 65 Colum. L. Rev. 162 (1965); Comment, 50 Va. L. Rev. 1135 (1964).

We have found three court of appeals decisions citing *Russell* which nonetheless refused to confer citizenship on the particular associations before them. The only one involving a labor union was an early *per curiam* decision of the Second Circuit,[9] and it is of questionable vitality in light of that court's recent *Mason* decision. Another involved precisely the same type of association as was involved in *Chapman* v. *Barney, supra,* and the court refused to depart from *Chapman* because *Russell* did not expressly overrule *Chapman.*[10] In the third case, the court recognized that *Russell* provides "a basis in the law for extending the rule that a corporation is a citizen of the state of its formation to organizations having corporate characteristics," but nonetheless refused to apply *Russell* to an unincorporated reciprocal insurance exchange.[11] None of these cases suggests any meaningful reason why an unincorporated association having a complete legal personality should be treated differently from a corporation for diversity purposes.

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[9] *Rosendale* v. *Phillips,* 87 F. 2d 454 (2d Cir. 1937).

[10] *Brocki* v. *American Express Co.,* 279 F. 2d 785 (6th Cir.) cert. denied, 364 U. S. 871 (1960).

[11] *Arbuthnot* v. *State Automobile Ins. Assn.,* 264 F. 2d 260, 262 (10th Cir. 1959).

E. The Grounds Advanced by the Court Below for Not Following *Puerto Rico* v. *Russell* Are Untenable.

The Court below advanced two reasons for not following *Russell* in this case: (1) that *Russell* involved the determination of federal jurisdiction under the Organic Act of Puerto Rico, and is inapplicable to the diversity statute; and (2) that, alternatively, if *Russell was* applicable to the diversity statute, it was "reversed" by the 1958 amendments to that statute. As we shall show, the reasoning of the court below on each of these points is untenable.

1. The Decision in Puerto Rico v. Russell Is Applicable to the Determination of Citizenship Under the Diversity Statute, as well as the Organic Act of Puerto Rico.

The court below dismissed *Russell* as irrelevant, because *Russell* involved the determination of federal jurisdiction under the Organic Act of Puerto Rico (now 48 U. S. C. §§ 863, 864), not the diversity statute.[12] Considering itself bound by this Court's earlier decisions in *Chapman* v. *Barney*, 129 U. S. 677 (1889) and *Great Southern Fireproof Hotel Co.* v. *Jones*, 177 U. S. 449 (1900), the court below found nothing in the *Russell* opinion to indicate that this Court "was consciously expanding federal diversity jurisdiction."

This anaylsis will not survive a reading of the *Russell*

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[12] *Russell* was a suit by the Puerto Rican government to collect assessments on land held by an unincorporated *Sociedad in Comandita*, none of whose members were citizens of Puerto Rico. The sociedad removed the case to federal district court in San Juan, pursuant to Sections 41 and 42 of the Organic Act, now 48 U.S.C. §§ 863, 864, which confer removal jurisdiction on that court not only over "all cases cognizable in the district courts of the United States" but also over "all controversies where all of the parties on either side of the controversy are . . . citizens of a State, Territory, or District of the United States not domiciled in Puerto Rico." The sociedad argued that it fell within the latter provision because, as an unincorporated association, the citizenship of its members controlled and none of them were citizens of Puerto Rico. The Court held, however, that the sociedad was itself a citizen of Puerto Rico.

opinion. While, to be sure, the precise issue in *Russell* was whether the sociedad had a citizenship for the purpose of federal jurisdiction under the Organic Act, rather than the diversity statute, the sociedad, the lower court, and this Court all treated the questions as indistinguishable. Thus, the First Circuit had held the sociedad not to be a citizen, explaining that "where the jurisdiction of a federal court over a suit brought against a partnership depends upon *diversity of citizenship*, the question is to be determined by the citizenship of its members." The First Circuit cited *Chapman* and *Great Southern Fireproof* "in support of the conclusion reached." *People of Puerto Rico* v. *Havemeyer*, 60 F. 2d 10, 12-13 (1932). The sociedad, in its brief to this Court urging affirmance (77 L. Ed 905), relied upon *Chapman* and *Great Southern Fireproof*. And this Court, reversing, couched its entire opinion as an analysis of the diversity precedents. Noting that corporations have been treated as citizens for *diversity* purposes because of their complete legal personalities (288 U. S. at 479-80), and that the sociedad likewise had a complete legal personality (*Id.* at 481-82), the Court saw "no adequate reason for holding that the sociedad has a different status for purposes of federal jurisdiction than a corporation" (*Id.* at 482). *Chapman* and *Great Southern Fireproof* were distinguished *not* because they were diversity cases, but because the particular associations involved in those cases had had legal personalities "too incomplete" (*Id.* at 480).

Moreover, in a subsequent decision, this Court characterized *Russell* as involving the issue of "diversity of citizenship on which jurisdiction of the federal courts depended." *Puerto Rico* v. *Russell & Co.*, 315 U. S. 610, 614 (1942). Accordingly, the rule of *Russell* cannot be distinguished, as the court below attempted, on the ground that it is inapplicable to the determination of diversity of citizenship.

2. Puerto Rico v. Russell Was Not Reversed By the 1958 Amendments to the Diversity Statute.

The alternative holding of the court below was that "whatever basis there once was for the belief that *Russell* intended to lay down new principles for the determination of citizenship for diversity jurisdiction purposes, it was reversed by the passage of the 1958 amendment to the diversity statute." (R. 18). This conclusion is a complete *non-sequitur.*

The portion of the 1958 amendment which the court below found so portentous was the addition of 28 U. S. C. § 1332(c), which provides:

> "(c) For the purposes of this section and section 1441 of this title, a corporation shall be deemed a citizen of any State by which it has been incorporated and of the State where it has its principal place of business."

The amendment was adopted to cure an anomaly in the treatment of corporations for diversity purposes. Prior to 1958, this Court had located the citizenship of corporations in the state of their incorporation. The result was that corporations were not considered citizens of their principal place of business though quite obviously that was the state where they were least likely to suffer local prejudice. Accordingly, 28 U. S. C. § 1332(c) was adopted to make corporations citizens of the State of their principal place of business. "The declared primary purpose of the amendment was to prevent local institutions from gaining admittance to federal courts in suits with local citizens by the device of incorporating in some other state. . . . Also important was the reduction of the federal court caseload thereby achieved." *Mason* v. *American Express Co.*, 334 F. 2d 392, 394, n. 2 (2d Cir. 1964).

The court below reasoned that, because the statute now expressly refers to corporations, but to no other associations,

Congress has expressed a judgment that no other associations may be citizens. The trouble with this reasoning is that it has no foundation in the legislative history. Congress did not, in 1958, make any judgments about who should be included, or excluded, from the term "citizen." It simply acted to correct a specific anomaly which had been brought to its attention regarding the *location* of the citizenship of corporations. Neither legislative report indicates that Congress gave any thought at all to the status of unincorporated associations. See H. Rep. No. 1706, 85th Cong. 2d Sess. (1958); S. Rep. No. 1830, 85th Cong. 2d Sess. (1958). Plainly, Congress did not "reverse" the *Russell* decision by the 1958 amendment, when it gave not a moment's consideration either to *Russell* or to the status of unincorporated associations.

The court below is alone in finding a legislative "reversal" of *Russell*. The Second Circuit, in *Mason, supra,* though demonstrating its awareness of the 1958 amendment, concluded that *Russell* continues to state the controlling principles governing the citizenship of unincorporated associations. And both the commentaries on the decision below found its reasoning on this point untenable. E.g. Comment, 50 Va. L. Rev. 1135, 1136, n. 16. (1964):

> "The court's reasoning is not persuasive. The amendment was intended merely to prevent essentially local corporations from invoking diversity jurisdiction by virtue of foreign incorporation. The problems of unincorporated associations were not considered."

See also Note, 65 Colum. L. Rev. 162, 166 (1965).

III. THE MODERN-DAY LABOR UNION HAS A COMPLETE LEGAL PERSONALITY.

We have shown that an unincorporated association should be treated as a citizen, for diversity purposes, if it has a complete legal personality. We now show that the labor union today has a complete legal personality.

Historically, labor unions have not always been treated as legal persons. At early common law they were viewed, like partnerships and social clubs, as loose groups of members, having no unique juridical personality.[13] Thus the Supreme Court of North Carolina in 1923 described the legal status of a labor union as an "airy nothing," *Tucker* v. *Eatough,* 186 N. C. 505, 507, 120 S. E. 57, 59 (1923), a remark which recalls strikingly Chief Justice Marshall's early characterization of the corporation in *Deveaux* as an "invisible, intangible and artificial being." (9 U. S. at 86)

But the labor union has undergone in the first half of the twentieth century a transformation in the eyes of the law quite as impressive as that of the corporation in the first half of the nineteenth century. By statute, and by judicial reformation of the common law, the union has emerged with a legal personality as complete as the corporation's and far more complete than the sociedad's in *Russell.*

The Sixth Circuit has found the characteristics of labor unions "much more impressive" than those of the sociedad in *Russell* "to compel recognition of unincorporated unions as juridical persons equivalent to corporations for purposes of citizenship in cases in which jurisdiction is founded upon diversity of citizenship." *American Federation of Musicians* v. *Stein,* 213 F. 2d 679, 687 (6th Cir.) *cert. denied* 348 U. S. 873 (1954). Likewise the district court in the present case found (and the Court of Appeals did not disturb its finding) that the Union "is a juridical person as fully and completely as if it were organized as a corporation, having

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[13] But see: Sir R. Reid [interrupting]: The trade unions are not corporations.

Prime Minister Balfour: I know; I am talking English, not law.
(House of Commons, 1904)

Quoted in Maitland, *Moral Personality and Legal Personality,* in Selected Essays 224 n. 1 (1936), and in Comment, 66 Yale L.J. 712 (1957).

as great unity of action and as much power centered in the governing officers" (R. 7, 13).

This Court has twice had occasion to comment upon the emerging legal personality of the labor union. As early as 1922, in holding labor unions suable as entities in the federal courts, this Court noted that with the "growth of . . . great labor organizations" had come "affirmative legal recognition of their existence." *United Mine Workers* v. *Coronado Coal Co.*, 259 U. S. 344, 385-86 (1922):

> "[I]n every way the union acts as a business entity, distinct from its members. No organized corporation has greater unity of action, and in none is more power centered in the governing executive bodies.
>
> "Undoubtedly, at common law, an unincorporated association of persons was not recognized as having any other character than a partnership in whatever was done . . . *But the growth and necessities of these great labor organizations have brought affirmative legal recognition of their existence and provisions for their protection. . . .*" (Emphasis supplied).

And in 1944, holding that a labor union, like a corporation, could not resist a subpoena by invoking the Fourth and Fifth Amendments, this Court specified the respects in which a labor union "is an institution which involves more than the private or personal interests of its members." *United States* v. *White*, 322 U. S. 694, 701-03:

> "Structurally and functionally, a labor union is an institution which involves more than the private or personal interests of its members. It represents organized, institutional activity as contrasted with wholly individual activity . . . The union's existence in fact, and for some purposes in law, is as perpetual as that of any corporation, not being dependent upon the life of any member. It normally operates under its own constitution, rules and by-laws which, in controversies between

member and union, are often enforced by the courts. The union engages in a multitude of business and other official concerted activities, none of which can be said to be the private undertakings of the members. Duly elected union officers have no authority to do or sanction anything other than that which the union may lawfully do; nor have they authority to act for the members in matters affecting only the individual rights of such members. The union owns separate real and personal property, even though the title may nominally be in the names of its members or trustees. The official union books and records are distinct from the personal books and records of the individuals, in the same manner as the union treasury exists apart from the private and personal funds of the members . . . The actions of one individual member no more bind the union than they bind another individual member unless there is proof that the union authorized or ratified the acts in question. At the same time, the members are not subject to either criminal or civil liability for the acts of the union or its officers as such unless it is shown that they personally authorized or participated in the particular act . . .

"Moreover, this Court in [*Coronado*] held that labor unions might be made parties defendant . . . by service of process on their officers.

"Both common law rules and legislative enactments have granted many substantive rights to labor unions as separate functioning institutions . . . Even greater substantive rights have been granted labor unions by federal and state legislation subsequent to the statutes enumerated in the opinion in [*Coronado*]." [14]

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[14] To the same effect, see *International Association of Machinists* v. *Gonzales*, 356 U. S. 617, 619 (1958):

"Though an unincorporated association, a labor union is for

This Court's analysis was in 1944. Since that time, labor unions have steadily acquired still further attributes of legal personality. In 1947 Congress enacted the Labor-Management Relations Act (Taft-Hartley), and imposed upon labor organizations, as entities, a host of rights and duties. For example, the Act expressly recognizes the labor union's power to contract and makes its contracts enforceable, Section 301(a), 29 U. S. C. § 185(a), and imposes duties under the unfair labor practice provisions which are the duties of the union as an entity, and not of its members, § 8(b), 29 U. S. C. § 158(b). The National Labor Relations Board viewed Taft-Hartley as signaling the death-knell of "the common law concept" of the labor union:

> "The Common Law concept of an unincorporated labor organization as a group of individuals having no separate entity apart from its members has been discarded—to the extent that it was not already outmoded in modern jurisprudence—by the Labor Management Relations Act, 1947. It is clear that the Act treats labor organizations, for all practical purposes, as juridical entities." *International Longshoremen's Union*, 79 N. L. R. B. 1487, 1508 n. 40 (1948).

Whatever conceivable doubt there might previously have been as to the completeness of the labor union's legal personality surely was removed with the enactment of the Labor-Management Reporting and Disclosure Act of 1959, 29 U. S. C. §§ 401 et. seq. Even prior to 1959, Congress had provided union members freedom from liability com-

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many purposes given the rights and subjected to the obligations of a legal entity. [Citing *Coronado Coal* and *White*]."

See also, *International Association of Machinists* v. *Street*, 367 U. S. 740, 808 (1961) (dissenting opinion of Mr. Justice Frankfurter):

> "Responsive to the actualities of our industrial society, in which unions as such play the role that they do, the law regards a union as a self-contained, legal personality exercising rights and subject to responsibilities wholly distinct from its individual members."

parable to that of corporate shareholders under State law. Section 301(b), Labor-Management Relations Act, 29 U. S. C. § 185(b).[15] But in 1959, through the LMRDA, Congress filled out the labor union's legal personality so that it is virtually indistinguishable from the corporation's in every respect. Thus, the LMRDA requires every union to "adopt a constitution and bylaws" and to file them as public records with the Secretary of Labor, 29 U. S. C. §§ 431(a), 435(a), just as corporations are required by State law to adopt and file by-laws. And it regulates virtually every aspect of the union's relationship with its members, in much the same way as State laws regulate the relationship of a corporation with its shareholders.[16] The basic premise justifying such regulation is Congress' judgment that a union is not simply a group of individuals, but rather a complex institution with an existence so distinct from its members as to require comprehensive statutory regulation of the union-member relationship. "Trade unions have grown well beyond their beginnings as relatively small, closely knit associations of workingmen where personal, fraternal relationships were characteristic. Like other

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[15] Section 301(b) provides that: "Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets."

[16] E.g., the LMRDA contains a "bill of rights" which members may enforce against the union by private legal action (29 U.S.C. §§ 411-15); it requires unions to file public reports concerning their organizational structure and finances (29 U.S.C. § 431); it requires their officers to report any financial relationships which might involve them in conflicts of interest (29 U.S.C. § 432); it regulates the relationship between national and local unions (29 U.S.C. §§ 461-64); it provides a comprehensive code governing the election of union officers (29 U.S.C. §§ 481-83); it creates statutory standards of fiduciary responsibility for union officers (29 U.S.C. § 501) and requires that they be bonded (29 U.S.C. § 502); it forbids certain types of loan transactions between unions and their officers or employees (29 U.S.C. § 503); and it creates certain statutory qualifications for union office (29 U.S.C. § 504).

American institutions some unions have become large and impersonal; they have acquired bureaucratic tendencies and characteristics . . ." S. Rep. No. 187, 86th Cong. 1st Sess. 6 (1959).

On the basis of its ever-increasing legal characteristics, the Supreme Court of California, in 1962, concluded that the modern labor union is "more akin to the corporation than the partnership or the social or fraternal order." *Marshall* v. *International Longshoremen's Union,* 57 Cal. 2d 781, 371 P. 2d 987 (1962):

> "The labor union is a developing institution and with its tremendous growth in importance and power has come to be more akin to the corporation than the partnership or the social or fraternal order . . . It is obvious that such organizations are no longer comparable to voluntary fraternal orders or partnerships; that they are *sui generis,* and approximate corporations in their methods of operation and powers . . . To consider such organizations under present day conditions as mere social or fraternal orders or partnerships is to close one's eyes to the realities now existing."

Thus far we have looked to those characteristics of the labor union which give it a personality like the corporation's. But in two respects, the labor union has a life distinct from its members which far exceeds that of the corporation. First, the labor union may have involuntary members. Under "union shop" contracts, dissenting employees may be required to join the union in order to retain their jobs. Second, the labor union is required by law to represent members and non-members alike. National Labor Relations Act, § 9(a), 29 U. S. C. § 159(a), *Steele* v. *Louisville & Nashville R. R. Co.,* 323 U. S. 192 (1944). What better evidence that the labor union has a personality distinct from its members than that it may have members who would prefer not to belong, and that it must represent persons who do not belong?

In short, the labor union of today has a "complete legal personality," and accordingly has a citizenship of its own for diversity purposes, distinct from the citizenships of its members.

IV. A LABOR UNION'S CITIZENSHIP IS IN THE STATE OF ITS PRINCIPAL PLACE OF BUSINESS.

We have shown that the modern-day labor union has a citizenship of its own for diversity purposes, distinct from the citizenships of its individual members. The question remains, of what state is the labor union a citizen?

Since the purpose of the diversity grant is to prevent prejudice to foreigners, a labor union should be regarded as a citizen of the state in which it is least likely to suffer such prejudice. In our view, that would be the state which is its principal place of business.

This is the test which Congress adopted for corporations in 28 U. S. C. § 1332(c). And it appears to have been the real basis for the early decisions of this Court, holding that corporations are to be regarded as citizens of their state of incorporation.

At the time this Court first held a corporation to be a citizen, corporations invariably incorporated in their principal place of business. Accordingly, though the Court used "State of incorporation" as a convenient formula to define a corporation's citizenship, this definition effectively made corporations citizens of their principal place of business as well. That the Court considered the latter factor at least equally important in determining citizenship is evident from its early decisions. Thus, in *Louisville, C. & C. R. R. Co.* v. *Letson,* 43 U. S. (2 How.) 495, 554 (1844) the Court stated:

> "A suit, then, brought by a citizen of one State against a corporation by its corporate name *in the State of its locality, by which it was created and where its business is done by any of the corporators who are chosen to*

> *manage its affairs,* is a suit, so far as jurisdiction is concerned, between citizens of the State where the suit is brought and a citizen of another State." (Emphasis supplied.)

And in *Marshall* v. *The Baltimore and Ohio Railroad Co.*, 57 U. S. (16 How.) 314, 326, 327 (1853), the Court emphasized that it was essential that corporations be deemed citizens of the state of their incorporation, to assure that an out-of-state plaintiff would not be left to the mercy of the State courts of "the State in which the defendant *resides,*" and of which the corporation's "trustees and representatives . . . are usually citizens."

Thereafter, the practice developed of incorporating in States other than the principal place of business. We have found no case, however, in which the Court was asked to amend its definition of corporate citizenship to accommodate to this change. However, in 1958, Congress amended the diversity statute to make corporations citizens of their principal place of business, expressing its view that the diversity statute had *always* been intended to reach that result. H. Rep. No. 1706, 85th Cong. 2d Sess. 4 (1958):

> "The underlying purpose of diversity of citizenship legislation (which incidentally goes back to the beginning of the Federal judicial system, having been established by the Judiciary Act of 1789) is to provide a separate forum for out-of-State citizens against the prejudices of local courts and local juries by making available to them the benefits and safeguards of the Federal courts. *Whatever the effectiveness of this rule, it was never intended to extend to local corporations, which, because of a legal fiction, are considered citizens of another State.* It is a matter of common knowledge that such incorporations are primarily initiated to obtain some advantage taxwise in the State of incorpora-

> tion or to obtain the benefits of the more liberal provisions of the foreign State's corporation laws. Such incorporations are not intended for the prime purpose of doing business in the foreign State. It appears neither fair nor proper for such corporations to avoid trial in the State where it has its principal place of business by resorting to a legal device not available to the individual citizen." (Emphasis supplied)

Those courts and commentators concluding that labor unions are citizens for diversity purposes have uniformly located that citizenship in the State of the union's principal place of business. *American Federation of Musicians* v. *Stein,* 213 F. 2d 679, 686 (6th Cir.) *cert. denied,* 348 U. S. 873 (1954); *Ex parte Edelstein,* 30 F. 2d 636, 640 (2d Cir.) (dissenting opinion), *cert. denied,* 279 U. S. 851 (1929); Comment, *Unions as Juridical Persons,* 66 Yale L. J. 712, 749 (1957); 3 Moore, Federal Practice, ¶ 17.25, pp. 1415-16 (2d Ed. 1963). See also, American Law Institute, *Study of the Division of Jurisdiction between State and Federal Courts,* Tent. Draft No. 2, § 1301 (b) (2) (1964).

The principal place of business of the union involved in this case—United Steelworkers of America—is Pennsylvania. The union so alleged in its removal petition (R. 4, 5); the Company did not dispute the allegation in its motion to remand (R. 6); the district court found it as a fact (R. 7); and the court of appeals repeated that finding and did not disturb it (R. 13). Indeed, it is common knowledge that—whether measured by number of members, number of employees, location of headquarters, or any other standard—Pennsylvania is the Steelworkers' principal place of business.

CONCLUSION

The Company is a citizen of North Carolina, and the Union is a citizen of Pennsylvania. Accordingly, there is diversity of citizenship, and the decision of the court below should be reversed.

Respectfully submitted,

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APPENDIX

Examples of Regional Prejudice Encountered by Labor Unions Attempting to Organize in Unfriendly Sections of the Country.

The best evidence that regional prejudice against labor unions exists is that those resisting union organization in unfriendly areas constantly appeal to such prejudice. At a House Subcommittee hearing in 1961, the Textile Workers' Union introduced some of the propaganda which it encountered while trying to organize in hostile areas. We have set out in this appendix certain of these materials. The materials included span five separate communities in which the union sought to organize. They are taken from Hearings, Administration of the Labor Management Relations Act by the NLRB, before the Subcommittee on National Labor Relations Board, 87th Cong. 1st Sess. (1961), Part I, at pp. 292, 319, 300, 301, 302, 303, 304, 305, 306, 307, 308, 315, 331.

The Black Plague of Unionism Hits the Southern Worker, Too!

Hearts of union organizers and their Northern bosses bleed for you only while they paint the "dismal" picture of your present circumstances and promise the glowing mirage of paradise if you'll just pay them dues, assessments, fines, etc.

Recently the California Cotton Mill, Uniontown, Ala., closed and was liquidated because it couldn't live under union demands. How the TWUA promises come true is best told in the following, written by a Uniontown minister who himself formerly worked in a cotton mill:

"I know that it was the CIO that caused all the trouble in Uniontown, and I know that it was because of the CIO that there is so much suffering in Uniontown now. The CIO caused the California Cotton Mill there to have to close down.

"Today the people who once worked in that mill are without work, except for the little extra jobs they can pick up here and there in and around Uniontown. They and their children are hungry and unhappy. They don't know what is going to happen to them.

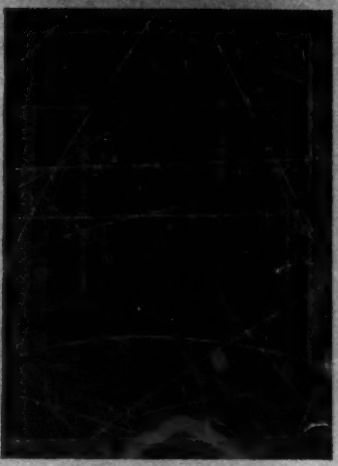
"I went to see one of the officers of the CIO local in Uniontown. I asked him why it was that his union didn't do something to help these poor people. I knew they had been paying union dues for a long time. This is what he told me.

"He said that when the California Cotton Mill shut down, the local CIO had about $6,000 in its treasury. But the national CIO froze this money, and wouldn't let the local have one dime of the money to spend, and that the national CIO hadn't done one thing to help feed the former union members in Uniontown, except a little help they did give at first to a favored few.

"When I first went to Uniontown, nearly every mill family owned an automobile. Today there are not more than four families that still have their cars. The people have had to give up so much of their household furnishings and appliances. Many of the children are not in school, for their parents can't buy them clothing to wear.

"Let me tell you one thing. I have been around a good bit in my time. And I have never seen a union take over in a mill that a strike didn't follow, sooner or later. And I have never seen a strike that did not cause hard feelings, a lot of trouble and a lot of suffering.

"Let me beg of you, good people, not to take the risk of letting the CIO come in here. If you do, I believe with all my heart that the time will come when you will regret it."



TODAY the mills pictured on these pages are silent testimonials to the union's betrayal of the thousands of employees now out of jobs. Only too late did these folks learn that the union always fulfills just one promise—to provide strikes.

Our Sister Community Of Darlington

JUST ACROSS THE STATE LINE IN SOUTH CAROLINA IS HAVING ITS

Biggest Industry Sold This Week

BECAUSE THE WORKERS IN THE PLANT RECENTLY

Voted For Union Representation

WE ARE HAPPY THAT THIS DID NOT HAPPEN IN LUMBERTON

Many of us remember the trying times we went thru just a little more than a year ago when Caledonia sold their Lumberton mill due to bad labor relations. During the first twelve months in which the new company has operated this mill, an average of 375 employees have been paid $747,502.36 in wages. In addition, the management of the new company has spent $2,250.00 in the purchase of materials and supplies with the merchants in our city.

THIS WEEK A GROUP OF LUMBERTON CITIZENS BANDED TOGETHER TO

Insure That Both Labor And Management

IN EVERY ONE OF OUR

Local Industries Has A Square–Fair Deal

We do not want any group of outsiders to come into our community to stir up trouble in our industries. Present labor relations in Lumberton's industries are excellent, and we expect to keep it that way.

LUMBERTON

INDUSTRIAL RELATIONS COUNCIL

"WORKING FOR LABOR AND MANAGEMENT"

[illegible], CHAIRMAN — JOHN LUTHER McLEAN, VICE CHAIRMAN — [illegible], TREASURER

EXECUTIVE COMMITTEE: JOHN BATEMAN, E. G. FISHER, J. C. JACKSON

JEFFERSON MILLS

NYLON PROCESSORS

PULASKI · VIRGINIA

April 28, 1958

TO THE EMPLOYEES OF JEFFERSON MILLS:

We believe it is our duty to bring to your attention the IWUA position on the subject of integration. This is a matter of immense concern to each and everyone of us. The attached brochure in our opinion very fairly and clearly presents the Union position.

We were not surprised to read in the November 8, 1957 issue of U. S. News and World Report that Walter Reuther, second in command of the AFL-CIO, was on the Board of Directors of the National Association for the Advancement of Colored People, better known as the NCAAP. Walter Reuther, as a member of that Board, is one of the persons that has spearheaded the NCAAP's drive for desegregation.

What should be of immense concern, whether you work at our plant or whether someone in your family works at our plant, is the Union's position on the hiring and working of colored persons. The Union supports legislation that would require in effect that white and colored be hired and work on an equal basis. Where the Union has been successful in [illegible]ping the passage of such legislation one finds colored men working next to white women and colored women working next to white women. This is a condition that the IWUA seeks to impose on the people in Virginia and, of course, would seek to impose on us here at Jefferson.

We repeat, we feel it is our duty to bring these facts to your attention. You certainly should know the Union's stand on this vital issue. You should know that a vote for the IWUA is a vote for desegregation.

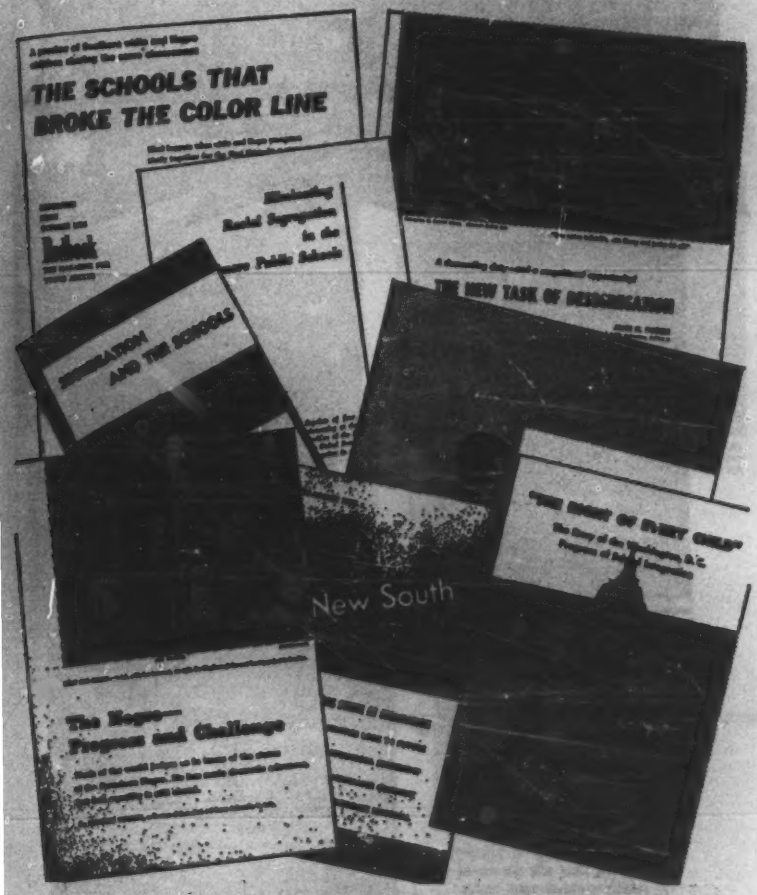
THE TWUA WILL 'BENEFIT' YOU BY DESTROYING ALL SEGREGATION IN THE SOUTH

Here's What Happened to $75,000 of Union Dues!

Donation for $75,000 is given the National Association for the Advancement of Colored People (NAACP) by CIO former president, Walter P. Reuther. The donation is shown being accepted by NAACP President Arthur Spingarn and Roy Wilkins, NAACP Administrator.

Your $36 A Year Dues, Plus Special Assessments, will Provide Even More Money for the NAACP

Dues of Union Members Paid for These and Many Other Booklets, All Distributed by the CIO, AFL Department of Education and Research, Washington, D. C.



Do You Want Your Money Spent This Way?

There is now no segregation in the use of CIO facilities, such as meeting halls, restrooms, drinking fountains, etc. Where the CIO and its unions have its way, there is likewise no segregation in the use of plant eating places, locker rooms, restrooms, etc.

EXCERPT FROM BRIEF FOR THE CIO IN THE UNITED STATES SUPREME COURT

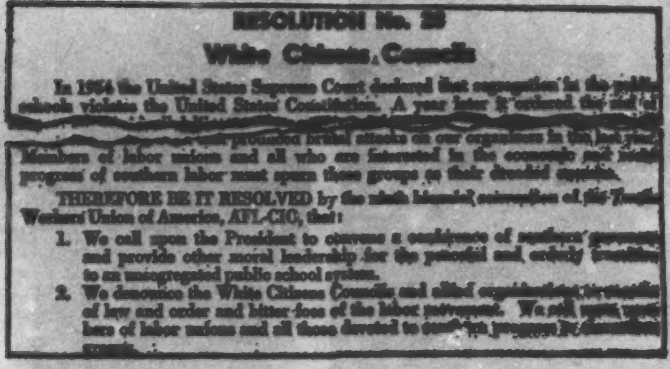
"The meetings of the CIO and its affiliates are never segregated."

EXCERPT FROM BRIEF FOR THE CIO IN THE UNITED STATES SUPREME COURT

"The CIO supports the elimination of racial segregation from every phase of American life"... "forthwith rather than by gradual adjustment."

EXCERPT FROM BRIEF FOR THE CIO IN THE UNITED STATES SUPREME COURT

The Northern TWUA Bosses are forcing this nasty integration dose down the throats of Southern Union Workers!



RESOLUTION No. 28

White Citizens Councils

In 1954 the United States Supreme Court declared that segregation in the public schools violates the United States Constitution. A year later it ordered that such [illegible]

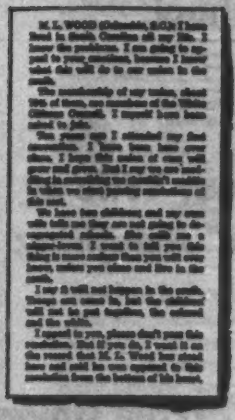
[illegible] provoked brutal attacks on our organizers in this last year. Members of labor unions and all who are interested in the economic and social progress of southern labor must spurn these groups as their deadly enemies.

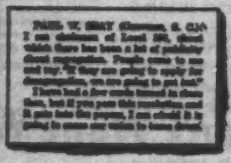
THEREFORE BE IT RESOLVED by the ninth biennial convention of the Textile Workers Union of America, AFL-CIO, that:

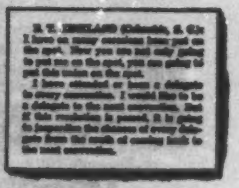
1. We call upon the President to convene a conference of southern governors and provide other moral leadership for the peaceful and orderly transition to an unsegregated public school system.
2. We denounce the White Citizens Councils and allied organizations [illegible] of law and order and bitter foes of the labor movement. We call upon true leaders of labor unions and all those devoted to [illegible]

Here's the infamous Resolution No. 28, passed by a vote of more than two to one at the convention of the TWUA, AFL-CIO, at Washington, D. C., in May, 1956. It is reproduced from the Union's own publication, "TEXTILE LABOR", Vol. XVII, No. 6 June, 1956.

And here's what Southern Union Members think of it!

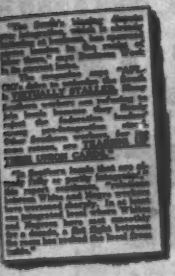


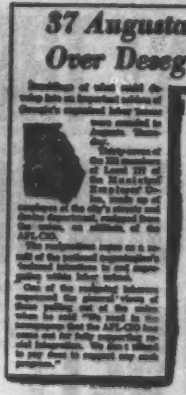


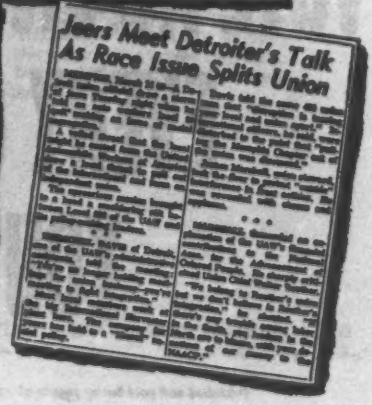


These are reproduced, without change, from "TEXTILE LABOR", Vol. XVII, No. 6, Page 24, June, 1956.

So These Southerners Did Something About It--They Tore Up Their Union Cards!







IF You Don't Want Your Children in an Integrated School;

IF You Don't Want Your Wife or Daughter in "Mixed" Meetings;

IF You Don't Want the Textile Union's New York Bosses to Integrate YOU;

VOTE AGAINST THE TWUA EVERY CHANCE YOU GET!

Published and paid for by people who desire to preserve the Southern Way of Life

The Anniston Star

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Another Labor Disaster

It is with profound regret that we noticed in the Sunday edition of this paper that the employes of the Linen Thread Company have petitioned the National Labor Relations Board for a union election to be held on August 24. It is to be hoped, however, that reconsideration will take place before that date.

If there is an impartial person who might have influence with the Union in this particular, it is hoped that intercession will be made so between the two parties to become involved in the proposed election before further damage has been done to amicable relations.

The Linen Thread Company is one of the largest textile operations in the South. And in view of good labor relations there in the past, the present directors of the company have moved their plants at three places in the North down here, thereby concentrating all their operations at one place.

Unfortunately, however, the company has not been able to hit top production on account of a few disgruntled operatives who have made trouble time after time in the last few months.

[illegible] has happened. The slowdown in business generally all over the country, as indicated in the price declines on the stock market in scores of commodities, including textiles. The man who has a secure job, therefore, is fortunate indeed.

Before they cause further distress at Linen Thread, it would be well for the troublemakers there to take a peep at the ghost-like appearance of the once prosperous Utica Mill. And even more enlightening as to what unfair demands can do, the abandoned Dwight Mill at Gadsden will furnish a distressing picture.

The Chamber of Commerce and the City of Anniston are doing all in their power to lessen the deplorable unemployment here in Anniston; and the members of the union in our sister city at Blue Mountain, it would seem, should be doing all in their power to keep the list of the idle from growing larger.

Unless we all join our efforts to keep every citizen of Anniston gainfully employed, the Chamber of Commerce might just as well close its doors, stop seeking new industry and thus allow this onetime Model City to become a mere ghost town for lack of cooperation on the part of its citizens.

And when we speak of Anniston, we of course have reference also to Blue Mountain, which is included in our metropolitan statistics. For anything that affects Linen Thread, one of our oldest industries, affects us as well; and hence it is that we make this plea to Linen Thread employes in behalf of all the people of our community.

ANNISTON, ALABAMA. NEWSPAPER SERVING LINEN THREAD WORKERS, BLUE MOUNTAIN, ALA.

THE SYLACAUGA NEWS
PUBLISHED EACH THURSDAY

Jay Y. Grove ..... Editor and Publisher
Clarice H. Grove ..... Business Manager

MEMBER OF
ALABAMA PRESS ASSOCIATION

NATIONAL EDITORIAL ASSOCIATION — GREATER WEEKLIES

Entered as Second Class Matter at the Post Office at Sylacauga, Alabama, under the Act of Congress of March 3, 1879.

New Construction Days

There is quite a similarity between the South's present new-construction days and the Re-construction days that followed the Civil War.

At that time Northern industrial leaders as well as the big banking interests tried every possible means to throttle the South to the extent that it would remain a captive area thereby subservient economically and politically to their Northern masters. History records only too vividly the scarred years during which the South fought for its very existence, and every Southerner is familiar with this phase of history without further reminder.

We have no intention of re-kindling any flame that has long been extinguished, but we would call attention to a similarity between those days and now.

The South is today in a boom of new construction and it is being resented by Northern capital and Northern industry almost as much as in re-construction days. Today, however, they have a new ally in the huge labor unions who know they can never throttle nor subsidize Southern labor and are therefore lending their every effort, and sparing no expense, to keep industrial expansion out of the South.

The recent telephone strike was not nation-wide, but applied only in the South. The L. & N Railroad strike was not felt to any marked degree in any other section. Third both of these strikes were settled definitely not in favor of the strikers is not pertinent to the topic.

A strike-bound truck company in Gadsden moved out bag and baggage to the state of Georgia.

A textile company in Uniontown, closed down by a strike, sold its equipment, ceased all operations and made a ghost town of a thriving community.

The coal industry, once one of Alabama's largest, as a result of periodical disruption and extended strikes, is practically a thing of the past.

A few years ago Huntsville was the hub of textile manufacturing in the state, with nine good-sized textile mills. All went out for one reason or another until only three large ones were left. One of these then ceased operations and is now a warehouse, leaving only two mills. Last week one of these two,—strike-bound, and without hope of settlement, shut its gates and suspended operations indefinitely. The closing of each of these mills put thousands of men and women out of employment.

Should these actions be continued and instituted allowed to multiply, the South's future as an industrial area is doomed. Should they be stopped the South will go on to greatness unparalled.

Now, in all fairness, let us look at the over-all picture from the other angle. There are many closed-shop industries operating in the South. They are operating without discord and without friction and without strife. This proves there is plenty of room for the closed-shop industry right alongside the open-shop ones. That's the way it should be —competitive. Let the worker decide which shop he wants to work in. That is the spirit and the letter of the Right to Work law and that's why we have so staunchly supported this legislation.

Our primary interest in labor legislation has to do naturally, with local industry, the major such industry being Avondale Mills. As proven above, past experience shows that textile mills do not lend themselves to closed shop operation, and where such has been the result of forceful procedure, the mills have closed down. This is what we do not want to see happen in Sylacauga, but this is most certainly what would happen in Sylacauga.

For ten months now Avondale workers on their way to and from work have been continuously aggravated and annoyed by people unknown to them who are becoming more and more obnoxious in their overbearing insistence until a breaking point is about to be reached. We believe properly supervised law enforcement can and will prevent any untoward serious incident, but should this fail the employees will most certainly not be at fault.

It's well and good to turn the other cheek but sometimes it's the other fellow's cheek that needs to be turned.

Almost A Record

A bill introduced by Talladega County state senator Kyser Leonard almost established a record in being defeated 49 to 1. The bill sought to put a price limit on retail sales and bargain items and it had a very unpopular reaction.

The interpretation seemed to be that while it was well enough for the senator with his augmented $50,000 per day income plus expenses, there were still people living on small budgets who have to take advantage of every saving possible.

As far as the merchant is concerned he feels that such a bill is class legislation against him that would limit competitive efforts, and to the bill is unpopular from both sources.

However, that the bill would not become a law was never in doubt, but had Senator Leonard known just about when the committee voted he would have had the distinction of being the only lawmaker to have his own bill defeated 100 percent.

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IN THE

Supreme Court of the United States

OCTOBER TERM 1964

NO. 652

UNITED STEELWORKERS OF AMERICA, AFL-CIO,
Petitioner

v.

R. H. BOULIGNY, INC.,
Respondent

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR RESPONDENT

QUESTIONS PRESENTED

1. Whether an unincorported association with members who are citizens of the state in which an action is instituted, and in which the plaintiff is incorporated, may remove such action to the United States District Court on the basis of its bare allegation that it is a labor organization and a citizen of another state where its principal place of business is located.

2. May an unincorporated association, whether a juridical person or not, acquire the status of a citizen of a state within the meaning of Article III, Section 2 of the United

States Constitution, and 28 U.S.C. Sec. 1332 (a)(1), solely by reason of having a principal place of business in a state?

STATEMENT OF THE CASE

This case is one of two companion cases filed at the same time in the state court and removed by petitioner, United Steelworkers of America ("the Union") to the United States District Court. The other case is White v. United Steelworkers of America, cited at page 15 of the Union's brief. Respondent R. H. Bouligny, Inc. (Bouligny) in its complaint stated a cause of action for libel, alleging that the Union had falsely accused it of certain scandalous conduct in a widely circulated Union newspaper. White, the plaintiff in the companion case, in his complaint stated a cause of action for libel, alleging that the Union published in the same Union newspaper, a defamatory and suggestive cartoon caricature picturing him in the bowl of a commode. The plaintiff White, an employee of Bouligny, and the Union consented to an order of the District Court that the jurisdictional disposition of the White case would abide by the decision in this case.

The Union offered no affidavits or other evidence in the District Court to prove its assertions that it is a juridical person and a citizen of the State of Pennsylvania. No evidence was offered as to how the Union is organized and how it operates. The Union offered no evidence in proof of its allegation that its Pennsylvania office is its "principal office," nor does the record contain any evidence to which the Court might apply legal standards to determine whether the Pennsylvania office is its principal office or its place of domicile.

The Union claims to be a citizen of Pennsylvania, but does not claim its status as a citizen and a separate legal

personality pursuant to any law of the State of Pennsylvania, nor does it claim a formal organization in that State. The sole basis for the Steelworkers' contention that it is a citizen of Pennsylvania is that its principal place of business is located there. The Union contends that certain acts of Congress have conferred upon it a separate legal personality but does not contend that any law has conferred upon it a citizenship in the State of Pennsylvania. The Union has not claimed or proven that any of its members are citizens of Pennsylvania. Bouligny introduced proof that the Union has many members who are citizens of North Carolina (R. 9, 10), which has not been rebutted by the Union.

The United States District Court found "the ultimate facts to be that members of the defendant unincorporated association are citizens of North Carolina. . . ." (R. p. 7). The District Court then held that the Union is a citizen of Pennsylvania and that it had diversity jurisdiction. The Fourth Circuit Court of Appeals on appeal held that the Union is not a citizen of Pennsylvania.

SUMMARY OF ARGUMENT

The Union to succeed in its purpose herein must establish: that an unincorporated association may be a juridical person for diversity jurisdiction purposes; that an unincorporated labor union is impliedly made a juridical person for such purpose by labor legislation enacted by Congress; that a juridical person, not otherwise being a citizen of a state within the meaning of Article III of the United States Constitution and 28 U.S.C. Sec. 1332 (a)(1), becomes such a citizen by the establishment of a principal office in a state; and that the bare allegation that a labor union has a principal place of business in a certain state satisfies the diversity jurisdictional requirements of the United States

Constitution and statutes. The cases decided by this Court establish that this result is not permitted by Article III of the United States Constitution, nor by the diversity of citizenship statute.

I.

The United States Constitution, Article III, Section 2 (1) and 28 U.S.C. Sec. 1332 (a)(1) provide for federal jurisdiction when the controversy is between "citizens of different states." Since the adoption of the Constitution these words have been construed by this Court to exclude unincorporated associations as juridical entities. *Thomas v. Ohio State Univ. Trustees,* 195 U.S. 207 (1904); *Great Southern Fireproof Hotel Co. v. Jones,* 177 U.S. 449 (1900); *Chapman v. Barney,* 129 U.S. 677 (1889); *Lafayette Ins. Co. v. French,* 59 U.S. 404 (1856). Some of the unincorporated associations considered in those cases bore a closer resemblance to corporations than the Union in this case. However, this Court in *Great Southern Fireproof Hotel Co. v. Jones,* declared that "this Court does not hold that either a voluntary association of persons, or an association into a body politic created by law, is a citizen of a state within the meaning of the Constitution."

A particularly weak point for the Union in its quest for citizenship in the State of Pennsylvania is its contention that it is a citizen there because its principal place of business is located there. A number of the unincorporated associations held by this Court not to be citizens of a state had a more substantial connection with the state of the alleged citizenship by reason of being organized pursuant to the statutes of the state. The Union has not alleged any such connection with the State of Pennsylvania. A case in point is *Bankers Trust Co. v. Texas & P.R. Co.,* 241 U.S. 295 (1916), where this Court held that the Constitution

did not permit a corporation created under a federal statute to be a citizen of the state where its principal place of business and its principal operating and general offices were located and where it alleged it was a resident and inhabitant.

The Union claims to be a separate entity by reason of burdens imposed upon it by the Labor-Management Relations Act and the Labor-Management Reporting and Disclosure Act. However, it does not appear that Congress intended to charter a separate entity.

The Union contends that *Puerto Rico v. Russell & Co.*, 288 U.S. 476 (1933) is authority for altering the diversity of citizenship rule so as to treat unincorporated associations like corporations. This case is wholly distinguishable and evinces no conscious intention to expand diversity jurisdiction. *Puerto Rico* was decided under the Organic Act of Puerto Rico which Congress enacted pursuant to the authority found in Article IV of the United States Constitution. This Court in *Balzac v. People of Porto Rico*, 258 U.S. 298 (1922) distinguished the United States District Court for Puerto Rico from those created pursuant to Article III of the Constitution. This Court in the *Puerto Rico* opinion wholly distinguished the above-cited controlling decisions in this case by means of the distinction between the civil law of Puerto Rico and the common law of the United States. The *Puerto Rico* case held that the sociedad involved there had a domicile in Puerto Rico and therefore federal jurisdiction under the Organic Act was lacking. That case did not hold that the sociedad was, or even might be a citizen of Puerto Rico, and certainly did not hold or intimate that it might be a citizen of any state of the United States by any construction of Article III of the United States Constitution. The rule of the *Puerto Rico* case seems to be that an association must have as complete

a personality as the one permitted the sociedad by the civil law and statutes of Puerto Rico, but not by the common law of the United States, before it might even have a domicile of its own. The *Puerto Rico* decision is no authority for the Union in its claim to be a citizen of the state of its principal place of business, since this point was not involved in the *Puerto Rico* decision. The United States Courts of Appeals in the great majority of cases decided since *Puerto Rico* have not thought that case authorized a change in the diversity of citizenship rule as applied to unincorporated associations in the United States, and this Court has consistently denied petitions for certiorari in these cases, including the ones involving labor unions.

The Union is not treated as a juridical person even in the State of Pennsylvania where it claims to be a citizen. 12 *Pennsylvania Rules of Civil Procedure*, Rule 2152, requires that unincorporated associations sue by trustees ad litem.

II.

The Union's goal of expansion of diversity jurisdiction by means of vesting unincorporated associations with corporate status is opposed by the modern philosophy that diversity jurisdiction should not be expanded. This philosophy is supported by sound reasons: that the fears of local hostilities, which never had more than speculative existence, are even less real today; that the jurisdiction of the federal courts in general will continue to expand in response to the general growth of federal political power, and the federal courts will need to be relieved of business that intrinsically belongs to the state courts; that the state legislative and state judicial power should be co-extensive; and federal courts cannot exercise the creative function essential to their dignity and prestige in the diversity of citizenship area.

Unincorporated associations are so varied in organization and structure that distinguishing between those associations to be accorded citizenship and those not to would of itself be troublesome and productive of much wasted effort in the federal courts; and probably would result in many cases being litigated in the federal courts in the absence of federal jurisdiction, contrary to the intent of the Constitution. Problems of this sort were foreseen and stated by this Court in *Thomas v. Ohio State Univ. Trustees, supra.*

There is less reason to expand diversity jurisdiction for the benefit of labor unions than for other types of unincorporated associations. Unions do not encounter geographic hostilities, since the working people in any area, who are in the majority, are likely to be pro-union. The hostilities between labor and management can be expected to exist everywhere, and particularly in the state where the union engages in most of its activities. Also Congress has left certain labor problems as exclusively matters of state jurisdiction, and if these were brought into the federal courts, which would not have the creative function, by means of diversity jurisdiction, the law in this area would be left to be shaped by a small and unrepresentative body of state cases. The Union has not demonstrated that the state courts are unable to handle the labor litigation which Congress has left to them.

The Union complains that as the law now stands that plaintiffs in lawsuits in which the unions are defendants have greater power to select the forum; however, plaintiffs have always had more power than defendants to select the forum, and a different decision in this case would not change that.

A change in the diversity of citizenship status of unincorporated associations should not be judicially accom-

plished. This is more appropriately a matter for the legislature.

III.

The phrase "citizens of different states" used in Article III of the Constitution and in 28 U.S.C. Sec. 1332 has been uniformly construed by this Court for almost two centuries so as to exclude unincorporated associations. Even in the light of the various decisions of this Court which the Union relies upon, Congress has not amended the statute to change the rule as to unincorporated associations. This Court's construction of the diversity of citizenship statute has become as much a part of its meaning as though specifically written into it. Congress assumed this to be the meaning of the statute when it enacted certain other legislation. See 28 U.S.C. Secs. 1332 (c), 1391 and 29 U.S.C. Sec. 185. Had Congress intended for unincorporated labor unions to have available diversity of citizenship jurisdiction as entities, it would have expressly so provided. To change the rule judicially now would upset the legislative schemes of Congress.

IV.

The United States Court of Appeals for the Fourth Circuit properly analyzed the decisions of this Court to hold that unincorporated associations cannot be citizens within the meaning of Article III of the Constitution. The Court of Appeals properly concluded that *Puerto Rico v. Russell & Co., supra,* did not change this rule and properly held that the Union is not a citizen of the State of Pennsylvania.

ARGUMENT

"That a limited partnership association created under the Pennsylvania statutes may be described as a 'quasi corporation,' having some of the characteristics of a corporation, or as a 'new artificial person,' is not a sufficient reason for regarding it as a corporation within

the jurisdictional rule heretofore adverted to. That rule must be extended." *Great Southern Fireproof Hotel Co. v. Jones*, 177 U.S. 449 (1900).

The Union to prevail in this case must establish: that an unincorporated association may be a juridical person, like a corporation, for the diversity jurisdiction purpose of being a citizen of a state; that an unincorporated labor union is impliedly made a juridical person for such purpose by labor legislation enacted by Congress; that a juridical person, not otherwise being a citizen of a state within the meaning of Article III of the United States Constitution and 28 U.S.C. Sec. 1332 (a)(1), becomes such a citizen by the establishment of a principal office in a state; and that the bare allegation that a labor union has its principal office in a certain state satisfies the diversity jurisdictional requirements of the United States Constitution and statutes.

The burden of Bouligny's argument will be that those propositions are not established by the decisions of this Court and ought not to be recognized in this case.

I. The Union Does Not Qualify For Article III Citizenship.

The United States Constitution, Article III, Sec. 2 (1) provides that "the judicial power shall extend . . . to controversies . . . between citizens of different states." Congress may grant all or only part of this jurisdiction to the lower federal courts. *Glidden v. Zdanok*, 370 U.S. 530 (1962). Congress, choosing to make the grant in the very words of the Constitution, has said "the District Court shall have original jurisdiction of all civil actions where the matter in controversy . . . is between (1) citizens of different states." 28 U.S.C. 1332 (a)(1). In the nearly two hundred years since the adoption of the Constitution, this Court has uniformly interpreted these words so as to

exclude unincorporated associations as citizens of states. These decisions apply with force to this Union which is particularly ill-qualified for citizenship, and especially so in comparison to associations which have already failed in the quest for this status.

A. The Controlling Decisions Deny Citizenship to the Union.

This Court in repeated decisions has firmly established the rule that unincorporated associations are neither juridical persons nor citizens for purposes of diversity jurisdiction. *Thomas v. Ohio State Univ. Trustees,* 195 U.S. 207 (1904); *Great Southern Fireproof Hotel Co. v. Jones,* 177 U.S. 449 (1900); *Chapman v. Barney,* 129 U.S. 677 (1889); *Lafayette Ins. Co. v. French,* 59 U.S. 404 (1856).

This question was extensively considered in the *Great Southern Fireproof Hotel Co.* case, where an association was held by this Court not to be a citizen of Pennsylvania within the meaning of Article III of the United States Constitution despite its organization under the statutes of that State and its close resemblance to a corporation. The association derived its corporate appearance from an act of the General Assembly of Pennsylvania under which it was organized. This act provided that the capital subscribed would alone be responsible for the debts of the association. The Pennsylvania Constitution expressly included the association within the definition of "corporation" for the purpose of imposing certain restrictions. It was held that this provision was not intended to invest the association with all the attributes of corporations. The force of the decision rejecting the claim of diversity jurisdiction becomes apparent when it is considered that the Pennsylvania act itself provided that the association was a citizen of the State of Pennsylvania. This Court in that opinion expressly disagreed with the prior holding in

Andrews Bros. Co. v. Youngstown Coke Co., 86 F. 585 (6th Cir. 1898), that an association formed under the Pennsylvania statute was a citizen of Pennsylvania for the purposes of diversity jurisdiction. It appears from the *Andrews Bros. Co.* opinion of the Sixth Circuit that, in addition to the foregoing corporate characteristics with which the act endowed associations, the association, pursuant to the act, was: (1) governed by a board of managers, (2) empowered to sue and to be sued in the association's name, (3) authorized to hold and convey real estate in its own name, (4) authorized to distribute profits by means of dividends, provided such dividends did not impair capital; and (5) the interests of the members were freely transferable or assignable, though the assignee could not participate in the affairs of the association until elected to membership.

The Sixth Circuit in *Andrews Bros. Co.* reasoned that "in the last analysis, the only absolutely essential attribute of a corporation is the capacity to exist and act within the powers granted, as a legal entity, apart from the individuals who constitute the members." But this Court in *Great Southern Fireproof Hotel Co.* said that it was not willing to recognize "quasi corporations" or "new artificial persons," and that the diversity jurisdiction "rule must not be extended."

A joint stock association created pursuant to the statutory law of the State of New York was held not to qualify as a citizen of New York in *Chapman v. Barney, supra.*

The first case found in which this question of diversity jurisdiction was considered by the Court is *Lafayette Ins. Co. v. French, supra,* where the Court said:

> "This Court does not hold that either a voluntary association of persons, or an association into a body politic, created by law, is a citizen of a state within the meaning of the Constitution."

The last case found in which this question was argued by counsel and considered by the Court is *Thomas v. Ohio State Univ. Trustees, supra,* where this Court said:

> "Here in the averment is only that the defendant Board of Trustees is a citizen of and domiciled in Ohio; not that the trustees themselves are citizens of that State. That averment alone is not sufficient."

The Board of Trustees in that case, like the Union in this case, argued that it was a legal entity, that its broad statutory powers made it so. This Court rejected that contention. The Board's contention that it was a citizen of Ohio because it was domiciled therein, which this Court also rejected, is at least equivalent to, or even more persuasive than, the Union's argument that it is a citizen of the State wherein is located its principal place of business.

This Court has never held for the purpose of establishing constitutional diversity jurisdiction that any type of organization, corporate or not, is a citizen of the state of its principal place of business. The Union apparently wishes to establish its citizenship in the State of its principal place of business by virtue of its similarity to the corporate form of organization. However, such a result would be contrary to the history and development of corporate diversity jurisdiction.[1]

In *Bank of U.S. v. Deveaux,* 9 U.S. 37 (1809), Chief Justice Marshall characterized a corporation as ". . . a mere creature of the law, invisible, intangible, incorporeal," and not a citizen for diversity purposes. This Court in *Louisville C. & C. R.R. v. Letson,* 43 U.S. 497 (1844)

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[1]The fiction of corporate citizenship has itself been intelligently criticized as an unwarranted expansion of federal diversity jurisdiction. See McGovney, *A Supreme Court Fiction,* 56 Harv. L. Rev. 853, 1090, 1225 (1943); Warren, *Corporations and Diversity of Citizenship,* 19 Va. L. Rev. 661 (1933).

held that: "When the corporation exercises its powers in the state which chartered it, that is its residence . . ." And that the corporation is to be "deemed" a citizen of that state for purposes of diversity jurisdiction. In *Marshall v. Baltimore & Ohio R.R.*, 57 U.S. 314 (1853), this Court held that a corporation cannot be a citizen, notwithstanding that the same result as in *Letson* was brought about by a conclusive presumption that all stockholders are citizens of the chartering state. The issuance of a state charter and formal organization pursuant to the state's statutory law are essential to citizenship by the reasoning in either case. An unincorporated association is not so easily deemed to be a citizen of the state in which is located its principal place of business, nor are its members so easily deemed to be citizens of that state. Article III of the United States Constitution would be stretched far beyond traditional judicial concepts in permitting an unincorporated association, not otherwise having the status of a citizen of a state, to acquire that status by locating a principal place of business in a state. Not even is this done by the 1958 amendment of 28 U.S.C. Section 1332 adding sub-section (c) which reads:

> "For the purposes of this Section, and Section 1441 of this Title, a corporation shall be deemed a citizen of any state by which it has been incorporated and of the state where it has its principal place of business."

Sub-section (c) was not enacted for the purpose of granting diversity jurisdiction, but for the purpose of withdrawing diversity jurisdiction which had theretofore existed in the state of the corporation's principal place of business. See H. Rep. No. 1706, 85th Cong. 2d Sess. (1958); 1 Cyclopedia of Federal Procedure, Sec. 2.284 (3d Ed. 1963 Cumu. Supp.). Sub-section (c) does not, therefore, raise the constitutional question of whether any

form of organization might be legislatively or judicially "deemed" a citizen of the state of its principal place of business for the purpose of making a grant of constitutional diversity jurisdiction.

Moreover, the word "deemed" used in sub-section (c) is itself something of an enigma. The legislative history of this sub-section given in Senate Report No. 1830 found in 1958 U.S. Code, Cong. & Adm. News, p. 3099, at page 3101, says:

> "It is now established doctrine that a corporation, for the purposes of jurisdiction, is deemed a citizen of the State in which it is incorporated (St. L. & S. F. Ry. Co. v. James, 161 U.S. 545, 16 S. Ct. 621, 40 L. Ed. 802 (1896)."

However, this Court in the *James* case did not revert to the doctrine of the *Letson* case, but plainly restated the doctrine that a corporation is presumed to be composed of citizens of the state which created it. The word "deemed" in 28 U.S.C. Sec. 1332 (c) would therefore mean "deemed" by this conclusive presumption, since it apparently was the intent of Congress to codify the doctrine of the *James* case. The use of the word "deemed" in conjunction with the state of the principal place of business is therefore not clear, and especially is this true when it is considered that this Court in *James* declined to modify the meaning of "citizen" in order to adopt the doctrine urged therein by counsel that a corporation domesticated in another state "shall be deemed to be composed of citizens of the second state. . . ." Ordinarily a person, either natural or juridical, could be expected to have only one state of citizenship. A person ordinarily is a citizen of the state where he is domiciled, and he has only one domicile. *Granite Trading Corp. v. Harris,* 80 F. 2d 174 (4th Cir. 1935). All the stockholders of a corporation could not at

once be presumed citizens of the incorporating state and also citizens of the state of the principal place of business since one would be inconsistent with the other. That a corporation might have two domiciles or two citizenships or that Congress intended this result also seems unlikely. The reasonable construction of sub-section (c) would seem to be that, in reality, a second citizenship is not created in the state of the principal place of business, but that this provision is no more than the withdrawal of a part of the jurisdiction of the United States District Courts by means of a paradoxical use of terms. A corporation would then be deemed a citizen of the state of its principal place of business only for the purpose of limiting federal diversity jurisdiction in that state. Thus sub-section (c) was an exercise of the congressional authority to withhold federal jurisdiction, not an affirmative grant of constitutional diversity citizenship.

B. Puerto Rico v. Russell Effected No Change.

The Union relies upon *Puerto Rico v. Russell & Co.*, 288 U.S. 476 (1933) as authority for the claim to citizenship in the State of Pennsylvania. *Puerto Rico* is no authority for this.

In *Puerto Rico* suit was brought in the Insular District Court of San Juan, Puerto Rico, against Russell & Company, a sociedad en comandita organized under the laws of Puerto Rico, to recover assessments levied under an act of the Legislature of Puerto Rico. The individual members of the sociedad were not named as parties but appeared specially and removed the cause to the United States District Court for Puerto Rico. That District Court found it had jurisdiction under authority of Section 41 of the Organic Act (48 U.S.C.A. Sec. 863), which conferred "jurisdiction of all controversies where all of the parties

on either side of the controversy are citizens . . . of a foreign state or states, or citizens of a state, territory, or district of the United States *not domiciled in Porto Rico*. . . ." (emphasis added). The Court of Appeals for the First Circuit affirmed (60 F. 2d 10). This Court reversed and directed the District Court to remand the case to the Puerto Rican Insular Court.

In distinguishing *Puerto Rico* as authority for the Union's position, there is first of all an important distinction between the District Court involved there and the Article III United States District Courts. In *Balzac v. People of Porto Rico*, 258 U.S. 298 (1922), this Court said of the Puerto Rico District Court:

> "The United States District Court is not a true United States court established under Article 3 of the Constitution to administer the judicial power of the United States therein conveyed. It is created by virtue of the sovereign congressional faculty, granted under Article 4, § 3, of that instrument, making all needful rules and regulations respecting the territory belonging to the United States. The resemblance of this jurisdiction to that of true United States courts, in offering an opportunity to non-residents of resorting to a tribunal not subject to local influence, does not change its character as a mere territorial court."

Article III is inapplicable to courts created in the territories outside the United States. See *Glidden v. Zdanok*, 370 U.S. 530 (1962). A construction of Article III or of the diversity statute therefore was not involved.

This Court in *Puerto Rico* apparently held that the sociedad had a domicile in Puerto Rico by reason of its relatively complete juridical personality under the Puerto Rican law which created it. The sociedad therefore failed

to meet the jurisdictional requirement of the Organic Act that it be "not domiciled in Porto Rico." This was not the equivalent of holding that the sociedad was a *citizen* of Puerto Rico. Domicile and citizenship are different things. *Wheeler v. Burgess,* 263 Ky. 693, 93 S.W. 2d 351 (1936). A citizen is one who is entitled to the privileges and immunities of the constitution and laws of a state or the nation as a member thereof. *Minor v. Happersett,* 88 U.S. 162 (1874). Domicile implies only the idea of a home or permanent residence. *Granite Trading Corp. v. Harris, supra.* Domicile does not necessarily imply citizenship in the case of juridical entities. *First Carolinas Joint Stock Land Bank v. New York Title and Mortgage Co.,* 59 F. 2d 350 (E.D.S.C. 1932). Consequently, the *Puerto Rico* decision furnishes no support for the Union's argument that an unincorporated association might be a citizen of a state for diversity jurisdiction. A further reason why this is true is found in the Organic Act requirement that "all of the parties on either side . . . are citizens . . . of a state . . . of the United States. . . ." The opinion observed "admittedly, if the individual members of the sociedad are 'parties' within the meaning of the Organic Act, Sec. 41, supra, the suit is one within the jurisdiction of the District Court because of their non residence. . . ." It would be surprising if an association organized and existing pursuant to the statutes of a political entity outside the United States were held to be a citizen of a state of the United States. And the *Puerto Rico* decision in particular furnishes no support for the Union upon the question of a citizenship being established by a principal place of business, since the sociedad was organized pursuant to Puerto Rican statutes and apparently existed solely in Puerto Rico, and the effect of the location of its principal place of business was not involved in the decision.

This Court found that the sociedad in *Puerto Rico* derived its juridical personality from two sources. The first source lay in the distinction between civil law and common law. The Court said that,

> "The tradition of the common law is to treat as legal persons only incorporated groups and to assimilate all others to partnerships. Chapman v. Barney, supra; Great Southern Fireproof Hotel Co. v. Jones, supra. The tradition of the civil law, as expressed in the Code of Puerto Rico, is otherwise. Therefore, to call the Sociedad en comandita a limited partnership in common-law sense, as the respondent and others have done, is to invoke a false analogy."

It should not be overlooked that the opinion itself distinguishes the controlling decisions in this case by means of the distinction between the tradition of the civil law and the tradition of the common law. The second source was in the relatively complete powers and separate identity with which the sociedad was endowed by the Code of Puerto Rico under which it was created.

That *Puerto Rico* was not intended to overrule prior precedent can also be inferred from the fact that the *Puerto Rico* opinion cited with approval the case of *Levering & Garrigues Co. v. Morrin*, 61 F.2d 115 (2d Cir. 1932), aff'd, 289 U.S. 103 (1933) where the Second Circuit said at page 117:

> "Where federal jurisdiction is grounded on diverse citizenship, it must affirmatively appear in the pleadings or from facts clearly proven that diversity of citizenship exists between all the plaintiffs on the one hand and all the defendants on the other. . . . For this purpose the shareholders of a corporation are conclusively presumed to be citizens of the state in which it is incorporated,

and their citizenship is then attributed to the corporation. . . . The plaintiffs would have us apply a similar presumption as to unincorporated labor unions because under the doctrine of the Coronada case, 259 U.S. 344, 42 S. Ct. 570, 66 L. Ed. 965, 27 A.L.R. 762, they may be sued in the association name. This decision liberalized procedure in this respect but did not hold that jurisdiction was to be correspondingly extended. That an unincorporated labor union is suable as a legal entity implies nothing as to the citizenship of its members for purposes of federal jurisdiction. . . ."

The *Coronada* case is one of those relied upon by the Union (in its brief at pages 9, 34, 35) as establishing a new doctrine applicable to labor organizations for diversity purposes.

C. The Almost Universally Predominant View Since Puerto Rico v. Russell.

Since the *Puerto Rico* decision, in the vast majority of cases in which the questions involved herein have been considered, it has been held that unincorporated associations may not be citizens of a state within the meaning of Article III. See *Calagaz v. Calhoon*, 309 F. 2d 248 (5th Cir. 1962) (labor union); *Hanson v. Chicago B. & Q. R. Co.*, 282 F.2d 758 (7th Cir. 1960) cert. denied, 365 U.S. 850 (1961) (labor union); *Brocki v. American Express Co.*, 279 F.2d 785 (6th Cir. 1960); *Arbuthnot v. State Automobile Ins. Assn.*, 264 F.2d 260 (10th Cir. 1959); *Lowry v. International Brotherhood of Boiler Makers, Iron Ship Builders & Helpers of America*, 259 F.2d 568 (5th Cir. 1958) (labor union); *Underwood v. Maloney*, 256 F.2d 334 (3d Cir. 1958) cert. denied, 358 U.S. 864 (1958) (labor union); *Swan v. First Church of Christ, Scientist, in Boston*, 225 F.2d 745 (9th Cir. 1955); *Hettenbaugh v. Airline*

Pilots Assn. Internatl., 189 F.2d 319 (5th Cir. 1951) (labor union); *Steele v. Guaranty Trust Co. of New York*, 164 F.2d 387 (2d Cir. 1947) cert. denied, 33 U.S. 843 (1948).

Mason v. Express Co., 334 F.2d 392 (2d Cir. 1964) is the only clean departure from the rule established by the controlling decisions of this Court. The association involved in *Mason* was a New York joint stock association, organized under a New York statute, and was apparently about equal in the completeness of its separate identity to the one in *Andrews Bros. Co. v. Youngstown Coke Co., supra*. *Mason* is not authority for the position taken by the Union upon the second question presented. The association in *Mason*, being organized and existing under the statutes of New York, did not have to depend upon the location of its principal place of business to establish its citizenship in New York.

No case has been found prior to the *Mason* case which broke with the established rule sharply enough so that it could be said with any degree of certainty that such break had occurred. *American Federation of Musicians v. Stein*, 213 F.2d 679 (6th Cir. 1954) cert. denied, 348 U.S. 673 (1954), was not a break. The Court in that case held only that the district court had jurisdiction to issue an injunction preserving the status quo pending a determination of whether it had jurisdiction of the parties. In arriving at this holding, the Court considered that the district court might need time to weigh the authorities and make a determination as to whether the diversity jurisdiction rule might be changing. When the case went back to the District Court, the District Court held that the Union did not qualify as a citizen. *Stein v. American Federation of Musicians*, 183 F. Supp. 99 (M.D. Tenn. 1960).

The opinion in *Van Sant v. American Express Co.*, 169 F.2d 355 (3d Cir. 1947) is as much subject to the construction that it holds that the objection to diversity jurisdiction was made too late for the first time on rehearing of the appeal as it is to the interpretation that the joint stock association created under the statutes of New York is a citizen. The Court said at page 372:

> "The point involved, in our view, is not under the rule of Chapman v. Barney. . . ."

The Court in Footnote 7 on the same page seems to recognize the continuing validity of the *Chapman* rule, and the Court does not appear to think that it is departing from that rule. In *Swan v. First Church of Christ, Scientist, in Boston*, 225 F.2d 745 (9th Cir. 1955), the only question was whether the church was a corporation or not. The Ninth Circuit apparently had no doubts that the church was not a citizen if it was not a corporation. Also it is relevant that the Ninth Circuit said of *American Federation of Musicians* in a footnote at page 747:

> "We do not regard that case as a further application of the rule of Puerto Rico decision as the court merely sustained the trial court's retention of jurisdiction for the issuance of a preliminary injunction to preserve the status quo while the court 'after a hearing, after adequate study and reflection,' would have time 'properly to interpret and apply the law.' "

Stein, Van Sant, and *Swan,* like *Mason,* are no authority whatsoever for the Union upon the second question presented, as to whether the Union's principal place of business locates its citizenship. No authority has been found which supports the Union's position upon this question.

D. The Union In This Case Is No Exception.

The Union in its removal petition alleged as the sole basis for federal diversity jurisdiction that it is "a labor organization, existing under the laws of, and having its principal place of business in the State of Pennsylvania," and that it is "a citizen of the State of Pennsylvania." (R. pps. 4, 5) No proof in support of the allegations was offered when they were challenged by Bouligny's motion to remand. (R. p. 8) Jurisdictional facts must distinctly and positively appear in the record, or the District Court is presumed without jurisdiction; jurisdiction may not be inferred argumentatively or conferred by consent. *Thomas v. Ohio State Univ. Trustees, supra.* "The policy of the statute conferring diversity jurisdiction upon the District Courts calls for a strict construction. . . . Accordingly, if a plaintiff's allegations of jurisdictional facts are challenged by the defendant, the plaintiff bears the burden of supporting the allegations by competent proof. . . . The bill must be dismissed if the evidence in the record does not support the allegations. . . ." *Thompson v. Gaskill,* 315 U.S. 442 (1942). Examination of the record discloses that the Union has failed to carry its burden of proof.

1) The Union's bare allegation that it is a labor organization does not establish it as the equivalent of a corporation for diversity purposes.

The Union, in its brief, at pages 3, 4, 33 and 34, recites the District Court's "finding of fact" that the Union is a juridical person as completely as if organized as a corporation and contends that the Fourth Circuit did not disturb this "finding of fact." The Union introduced no evidence from which such a "fact" might have been found, but relied solely upon several acts of Congress imposing certain obligations upon labor unions and conferring cer-

tain immunities, and also upon two cases, *United Mine Workers v. Coronada Coal Co.*, 259 U.S. 344 (1922) and *United States v. White*, 322 U.S. 694 (1944). The finding then is not one of fact but one of law. The reversal by the Fourth Circuit amounts to a repudiation of this so-called finding of fact which is, in truth, not a finding of fact but a conclusion of law.

As has already been mentioned, the Second Circuit in *Levering & Garrigues Co.* did not consider that the *Coronada* case, which held a labor union suable as an entity, afforded any basis for saying that an unincorporated labor union might be a citizen for purposes of federal diversity jurisdiction. This view apparently was not disapproved in the *Puerto Rico* decision. The *White* case, holding that a labor union could not resist a subpoena by invoking the Fourth and Fifth Amendments, would seem to add little to the *Coronada* case in this respect.

The Union, in its brief at pages 36-38, cites the Labor-Management Relations Act and the Labor-Management Reporting and Disclosure Act in support of its contention that Congress has given labor organizations corporate-like personalities. However, as appears from an examination of the cited legislation, Congress did not intend to and did not charter a new form of corporation or corporate-like personality. The fundamental purpose of the legislation is to regulate the unions rather than to charter them as more complete separate identities. This is but a practical recognition by Congress that any large and influential organization, such as some unions are, might abuse its members and perhaps others with whom it deals unless it is regulated. Thus requiring every union to adopt and file a constitution and by-laws (29 U.S.C. Secs. 431 (a), 435 (a)) is not the equivalent of issuing a corporate charter and thereby chartering a new entity which had not theretofore existed.

The manner in which the State of Pennsylvania treats the Union as an unincorporated association would seem to be relevant to the Union's claim of a juridical personality for purposes of citizenship therein. *Pennsylvania Rules of Civil Procedure,* Title 12, has the following provisions in regard to unincorporated associations:

"Rule 2151. As used in this Chapter 'action' means any action or proceeding at law or in equity . . .;

'Association' means any unincorporated association conducting any business or engaging in any activity of any nature whether for profit or otherwise under a common name. . . .

Rule 2152. An action prosecuted by an association shall be prosecuted in the name of a member or members thereof as trustees ad litem for such association. An action so prosecuted shall be entitled 'X association by A and B, Trustees Ad Litem' against the party defendant.

Rule 2153 (a). In an action prosecuted against an association it shall be sufficient to name as defendant either the association by its name, whether the same is registered, filed or not, or any officer of the association as trustee ad litem for such association in the manner prescribed by Rule 2152.

(b) If a plaintiff prosecutes an action against an association in the association's name only, the association may prosecute any setoff, counter-claim or cross-action in its association name."

These rules are applied to unincorporated labor unions. *Highway Truck Drivers and Helpers v. Cohen,* 409 Pa. 546, 187 A 2d 291 (1963). Thus, the Union would not seem to be treated altogether as a juridical person in the state where it claims to be a citizen.

The tenor of the Union's argument is that it should now be treated as a citizen for diversity purposes, since it is now possible for it to have a more complete legal personality than was heretofore available to unincorporated associations. However, it has not demonstrated that it has a legal personality even as complete as those already considered by this Court in *Chapman v. Barney, supra; Great Southern Fireproof Hotel Co. v. Jones, supra;* and *Thomas v. Ohio State Univ. Trustees, supra.*

2) The Union's Bare Allegation that its principal place of business is in the State of Pennsylvania does not establish it as a citizen of that State for diversity purposes.

Even if it could be said that the labor acts organize the Union as a separate entity as complete as a corporation, still it would not be a citizen of a state within the meaning of Article III. "State citizenship does not result from the mere creation of a corporation under federal law." *Federal Intermediate Credit Bank of Columbia v. Mitchell,* 277 U.S. 213 (1928). And in *Bankers Trust Co. v. Texas & P. R. Co.,* 241 U.S. 295 (1916), this Court held that a corporation created under federal statutes could not be a citizen of Texas within the meaning of the Constitution, even though it had "its principal place of business and its principal operating and general offices in the Northern District of Texas," and alleged it was a "resident and inhabitant of that district." Nevertheless, the Union attempts to locate its state of citizenship by the bare allegation that its principal place of business is in the State of Pennsylvania. No other facts tending to prove either domicile or citizenship are alleged.

Far from being of assistance to the Union, the *Puerto Rico* case seems to hold that an association must have a

personality as complete as the one permitted the sociedad by the civil law and statutes of Puerto Rico, but not by the common law in the United States, before it may even have a domicile of its own as an entity; and then that domicile is located by the law which created it, not by the principal place of business.

The Union, not having proven that it is formally chartered as a corporation pursuant to state statutory authority, is not able to claim state citizenship. This result is not permitted by Article III of the United States Constitution.

II. Sound Policy Requires That The Union Be Denied Article III Citizenship.

The main stream of modern legal thought is that federal diversity jurisdiction should be more severely restricted rather than expanded. In Friendly, *Historic Basis of Diversity Jurisdiction,* 41 Harv. L. Rev. 483 (1928), the author reviews the history and development of federal diversity jurisdiction and soundly concludes at page 510:

> "The steady expansion of the jurisdiction of the federal courts, especially since reconstruction days, has been but a reflex of the general growth of federal political power. That growth will not abate, since it is responsive to deep social and economic causes. Only one aspect of the work of the federal courts is out of the current of these nationalizing forces — the jurisdiction based on diversity of citizenship. This has its origin in fears of local hostilities, which had only a speculative existence in 1789, and are still less real today. The unifying tendencies of America here make for a recession of jurisdiction to the states, rather than an extension of federal authority. The pressure of distinctively federal litigation may call for relief of business that intrinsically

belongs to the state courts. How far, if at all, the United States courts should be left with jurisdiction merely because the parties are citizens of different states is a question which calls for critical re-examination of the practical bases of diversity jurisdiction."

In the American Law Institute's "Study of the Division of Jurisdiction Between State and Federal Courts," Tentative Draft No. 1 (April 30, 1963), the general statement on diversity jurisdiction appearing at page 36 is as follows:

"There should be stated at the outset the firm premise of the Reporters that access to the federal courts because of the diversity of citizenship of the parties should be permitted only upon a showing of strong reasons therefor and only to the extent that these reasons justify. This premise is grounded upon the political axiom, advanced by Hamilton in Justification of the Federal Judicial Power, that judicial and legislative authority should be co-extensive. So long as federal courts continue to decide cases arising under state law without the possibility of state review, the state's judicial power is less extensive than its legislative power; this is an undesirable interference with state autonomy. It would be preferable to see the use of the federal courts concentrated upon the adjudication of rights created by federal substantive law. In such adjudication the federal courts speak with the authority which they lack in diversity cases since Erie R.R. v. Thompkins, 304 U.S. 64 (1938), and can thus exercise the creative function which is essential to their dignity and prestige."

The precedent which the Union seeks in this case would result in expansion of federal diversity jurisdiction contrary to the main current of modern legal thought.

The Union's argument that *Puerto Rico v. Russell, supra,* changed the diversity rule is further diluted by the fact that the decision in that case withholding federal jurisdiction is consonant with the policy of restricting federal jurisdiction based upon the citizenship of the parties, whereas the result urged by the Union in this case is opposed by that policy.

There are difficulties attendant upon granting diversity jurisdiction to some unincorporated associations because they have characteristics of an entity which were not present in the case of corporations. The corporate form of organization is well defined and universally recognizable, all being treated alike for diversity jurisdiction purposes; but associations can and do exist with an infinite variety of shades and combinations of corporate characteristics. If the concept of a citizen were expanded to include some unincorporated associations by reason of their characteristics as entities, each case would have to stand on its own bottom in its claim to citizenship, with attendant uncertainty and increased burden of litigation in the federal courts. The result would be a great many additional cases being removed to or filed in the federal courts, both where there is or where there is not determined to be federal jurisdiction. In each one of these cases, the Court would have to determine whether the association has sufficient characteristics of an entity to be a citizen. This situation would result in unnecessary and wasteful increased cost of operation of the federal courts due to the increased work load, in the federal courts being distracted from more important questions, and in the increased cost of litigation, wasted time and harassment to litigants.

This case is an example. It has been pending in the federal courts for two years without the federal jurisdiction question being finally determined. If the District Judge had

remanded as he should have under the controlling decisions, the case would have long ago been tried on its merits.

One effect would undoubtedly be that district judges would encounter increased difficulty in distinguishing citizens from non-citizens, resulting in increased numbers of cases being litigated in federal courts when there is no federal jurisdiction.

If the Union obtains the precedent it seeks hereby, district judges will likely find themselves in an unfamiliar quandary with increasing regularity. Unincorporated associations with some characteristics of an entity will find it easy to allege that they are juridical persons and citizens for the purpose of instituting litigation in or removing lawsuits to federal courts. The adverse party in many instances will not want to challenge the federal jurisdiction. The district judge will then be put to the election of trying the lawsuit when he suspects federal jurisdiction is lacking or of incurring the expense of money and time in carrying out his own investigation of the status of the party seeking federal jurisdiction.

Perhaps the worst result of all would be the divisions in the circuits likely to occur regarding the question of the dividing line between unincorporated associations to be judicially recognized as persons and those to be excluded from this status. Two circuits have in varying degrees displayed some predisposition to want to regard some unincorporated associations as the equivalent of corporations for diversity. See *Mason v. American Express Co.*, 334 F.2d 392 (2d Cir. 1964); *American Federation of Musicians v. Stein*, 213 F.2d 679 (6th Cir.) cert. denied, 348 U.S. 873 (1954); *Andrews Bros. Co. v. Youngstown Coke Co.*, 86 F. 585 (6th Cir. 1898). The other circuits have

not manifested this predilection. The breakdown in the clear distinction between corporations and unincorporated associations would doubtless result in some circuits going much further in the recognition of unincorporated associations than others are willing to go, with corresponding confusion in the District Courts. The judicial task of reestablishing a clear line of distinction would be virtually impossible. One argument in favor of recognizing some unincorporated associations has been the vague and perhaps irrelevant one that justice requires greater equality of treatment between corporations and unincorporated associations; but this argument ignores the resulting even greater inequality of treatment among unincorporated associations which would occur, as well as ignoring the fundamental constitutional and statutory tests.

This Court in *Thomas v. Ohio State Univ. Trustees, supra,* declared its policy in denying citizenship to the Board of Trustees when it said,

> "A contrary ruling would, we apprehend, produce confusion and embarrassment in litigation relating to those public state institutions or agencies in Ohio which, according to the decision of its highest court, were not endowed, nor intended to be endowed, with corporate powers."

And similar conditions will be brought into existence if the Union succeeds in establishing the precedent it seeks in this case.

There may even be less reason to expand diversity jurisdiction for the benefit of labor unions than for the benefit of other types of unincorporated associations. The heat of conflict occasionally surrounding labor unions is generated by friction between different segments of society, rather than by different geographic regions. When such ill feeling

does exist, it is between labor and management and those in sympathy with one side or the other, rather than between geographic regions. Unions do not import labor into a geographic region but organize the labor which is already there. And labor disputes ordinarily occur in reality between residents of the same state — the employees on one hand and their employers on the other. It is unlikely that unions could validly claim to be injured by a widespread hostility among working people, since this is the group of which unions are composed. Instead of being injured in local litigations by this class hostility where it exists, the unions may be more often benefited, since local juries are more prone to be composed of representatives of the more numerous working people than of representatives of management groups. A philosophy of this nature was expressed by the author of a note, 38 Harv. L. Rev. 510 (1925) when he said at page 513:

> "But there are even more practical arguments against this extension of federal jurisdiction. In the first place, it seems that the state courts can, by and large, satisfactorily handle this labor litigation. The narrow state partisanship which was the original justification for any diversity of citizenship jurisdiction has quite disappeared. In the second place, the federal courts have a most important primary function in the constitutional adjustment of the multiple units of our type of government and their relations to the people. For this they need a lifting of the burdens of the kind of litigation which can be handled by other courts, rather than a crush of labor cases; they need the amity of state courts, which will not be improved by the ouster of further jurisdiction; and they need the unreserved confidence of all classes of the people, which may be shaken by their be-

coming the storm center for the unreasoning class feelings which always characterizes labor cases."

The author of that note is not alone in his feeling that labor cases are best left to the state courts. The author of a note in 39 N.Y. Univ. L. Rev. 1124 (1964) at page 1126 says the granting of citizenship in labor union cases "would have created serious inconsistencies in the statutory scheme for labor regulation." In explanation, it is said:

> "Certain labor problems are presently exclusively matters of state jurisdiction: when the NLRB actually declines jurisdiction, when the activity challenged is arguably not protected or prohibited by federal statutes, and when violence is involved. If diversity were allowed in these cases, states would lose control over them. Not only would this deprive states of established areas of control, it might result in a lessening of remedial efficacy, since in many cases federal courts would be unable to grant the same form of relief as state courts. This conflict with state jurisdiction over labor problems would arise often, whether a union were deemed a citizen of the state of its national office, or of its local; and courts, moreover, have little guidance in choosing between the alternatives."

And the author of the note further said of the type of diversity jurisdiction expansion urged by the Union:

> "Regardless of how each particular type of association is treated, application of the entity theory to determine the citizenship of unincorporated associations would probably result in liberal access to the federal courts, since many forms of business associations possess these characteristics which *Russell* and *Mason* considered essential. But this approach might well cause an unjustifi-

able expansion of diversity jurisdiction. The argument that the federal court is needed as a fair tribunal presumes that state courts will unfairly discriminate against out-of-state parties. This reasoning, prominent in the expansion of citizenship to include corporations, has become increasingly less justifiable. The possible exception is the treatment accorded labor unions and other social-action groups, but in the case of unions, Congress has indicated an intent that state courts be allowed the degree of control they now exercise. Some commentators note that since federal courts can only interpret, and not modify, state law, removal from the state courts of large classes of cases leaves state law to be shaped by a restricted and possibly unrepresentative body of cases. Also, the federal caseload is presently large and inclusion of many forms of unincorporated associations might make it unmanageable, and would arguably conflict with Congress' concern to limit federal jurisdiction for corporations. Similarly, there are disadvantages in expanding the federal judiciary to compensate for greater access to federal courts. Thus, it is questionable whether such a radical extension of federal jurisdiction is a matter for the courts. The American Law Institute has recommended that 'any association or partnership' able to sue and be sued in its common name be deemed a citizen for diversity purposes, but it proposes that this change be effected by legislation."

The policy reasons urged by the Union for a grant of diversity jurisdiction in this case have little force. The Union in its brief (pps. 15, 16) argues that the decision below is unfair "for it gives the plaintiff unprecedented power to determine the forum in which the case will be tried. If he wants to be in federal court, he will utilize the 'class action' device to create diversity jurisdiction. If, on

the other hand, he prefers to be in the state court, he need only sue the Union there as an entity, and, under the decisions of the court below, the Union will be powerless to remove." It is difficult to see why a different decision in this case would change this result. Under the reasoning cited by the Union in support of this argument, it would seem that even though the Union is regarded as a citizen of Pennsylvania, a local plaintiff in another state might name local union members as defendants in a class action and thereby defeat federal jurisdiction. Or the plaintiff might control the jurisdiction of the lawsuit by naming the union itself as an entity. Conversely, the Union when it is the plaintiff would be in a position to control jurisdiction in like manner by suing as an entity or as a class action or by selection of the state or forum in which to bring suit. As a practical matter, plaintiffs have always been and probably always will be in the best position to select both the jurisdiction and the venue of an action. Thus the plaintiff on a transitory cause of action might sue a defendant in any state in which the defendant can be served with process, and the defendant is not in a position to select the state in which he would most prefer to defend. If the action is brought in the United States District Court, the defendant may change the venue only in the discretion of the Court and for the most narrowly defined reasons. 28 U.S.C. Secs. 1391, 1401. If the action is in a state court, the defendant may not remove it to another state. And he may ordinarily change the venue within a state only with difficulty and for narrowly defined reasons. See *Brendle v. Stafford,* 246 N.C. 218, 97 S.E. 2d 843 (1957).

The Union in the appendix to its brief attaches certain matter apparently published by management in various labor disputes in an effort to impute the sentiments of one

side of the dispute to an entire geographic region. The libelous publications which are the basis of Bouligny's action and White's action are an indication of the fact that scurrilous publications are not all confined to the management side. Labor disputes are not confined to the southeastern part of the United States, as the appendix to the Union's brief might insinuate; and common law tortious activity between residents of the same state would be among the most common causes removed to the federal courts pursuant to the precedent the Union seeks. The Union has not established that state courts are inadequate to handle problems arising under state law in these areas.

If the Union succeeds in establishing the precedent it seeks herein, based upon a holding that the labor acts of Congress have re-created the Union as a juridical person by means of the burdens imposed and privileges conferred, a new federal jurisdictional door will open for the unions which Congress never intended. It has long been "the general rule that district courts have jurisdiction of suits brought by or against corporations organized under an act of Congress on the ground that they are controversies arising under federal law." *Federal Intermediate Credit Bank of Columbia v. Mitchell, supra.* Congress enacted 28 U.S.C.A. Sec. 1349 in 1948 to counteract the effect of this rule by providing "the district courts shall not have jurisdiction of any civil action by or against any corporation upon the ground that it was incorporated by or under an act of Congress, unless the United States is the owner of more than one-half of the capital stock." If unincorporated associations which have certain characteristics of an entity are to be treated as indistinguishable from corporations for the purpose of obtaining federal diversity jurisdiction by reason of the powers conferred by federal acts, it would be difficult to distinguish them from corporations

created under federal acts for the purpose of attaining federal question jurisdiction. But this result would serve to defeat the intent of Congress, since the limitation of 28 U.S.C.A. Sec. 1349 does not specifically apply to unincorporated associations.

This ripe new field for litigation would serve only to swell the flood of litigants seeking juridical entity diversity jurisdiction and further overburden the already overburdened federal courts.

The above quoted excerpts make it apparent that the legal writers are anxious that the quality and effectiveness of the federal courts not be impaired by a flood of diversity cases. This would be the inevitable result of establishing the precedent which the Union seeks.

The enormous number of cases annotated under 28 U.S.C.A. Secs. 1331, 1332 and 1441 lead to the conclusion that there is no dearth of litigants to seek the new type of federal jurisdiction. They await only some word of encouragement from this Court.

III. The Diversity Statute Is Not Subject To Enlargement By Construction To Include The Union As A Citizen For Diversity Purposes.

The diversity of citizenship statute grants jurisdiction to the district courts in all controversies between, in the words of Article III of the Constitution, "citizens of different states." Those words of the Constitution have been uniformly construed by this Court so as to exclude unincorporated associations even though they might be separate identities, quasi corporations, or new artificial persons. *Great Southern Fireproof Hotel Co. v. Jones, supra.* In the light of the construction given these words since the inception of the United States, Congress has not seen fit to

amend the diversity statute to provide otherwise. Congress amended this statute in 1958 (28 U.S.C.A. Sec. 1332 (c)) to make express provision for corporations and to decrease the federal diversity jurisdiction theretofore existing as to corporations. In the face of the historic and continuing construction of this statute by this Court and in the light of the decision in *Puerto Rico v. Russell & Co., supra,* Congress nevertheless made no provision for unincorporated associations. This construction of the diversity of citizenship statute has by uninterrupted and unmodified long standing become as much a part of the statute as if expressly and specifically written into it. This construction of the statute has obviously been assumed to be the meaning of it in other legislation enacted by Congress.

The 1958 amendment of the general venue statute (28 U.S.C. Sec. 1391 (c)) provides that a corporation may be sued in any district in which it is incorporated, or licensed to do business, or is doing business. The venue statute is silent as to unincorporated associations. It is apparent therefrom that the legislative scheme presumes that as to unincorporated associations the historic rule will control.

Congress made provision for the jurisdiction and venue of certain actions by or against labor unions in 29 U.S.C. Sec. 185, when unions are sued or sue for violation of contracts between an employer and a labor organization. In such instances, the venue is established "(1) In the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members." It is unlikely that Congress would have thought it necessary to provide such venue, unless Congress believed that 29 U.S.C. Sec. 185 created in a very limited way for the first time a new federal question

jurisdiction for unincorporated labor unions. The new venue was created to correspond to the new limited jurisdiction in the absence of any other venue for unions. These venue provisions might not be appropriate for general diversity jurisdiction litigation involving unions as citizens of states.

Congress obviously omitted any provision for unincorporated associations from 28 U.S.C. § 1332 and 1391 because it was assumed there would be no change in the diversity rule. To change the diversity of citizenship rule in the manner urged by the Union would upset legislative schemes Congress has enacted in its long reliance upon the historic diversity rule.

The American Law Institute has undertaken a study of the division of jurisdiction between state and federal courts and has published two tentative drafts. Diversity jurisdiction as applied to unincorporated associations is a part of the study. See Tentative Draft No. 2, Section 1301 (b)(2) (1964). This effort may result in Congressional reconsideration of the diversity jurisdiction rule. If the law is to be changed at all, it should be changed legislatively and not judicially. And perhaps it ought not to be changed at all in the absence of a constitutional amendment.

IV. The Court Of Appeals Opinion Is Correct And Achieved The Proper Result.

The Fourth Circuit cited as controlling precedent the rule stated in *Great Southern Fireproof Hotel Co. v. Jones, supra:*

> "This Court does not hold that either a voluntary association of persons, or an association into a body [fol. 36] politic created by law, is a citizen of a state within the meaning of the Constitution."

* * *

> "But the Express Company cannot be a citizen of New York, within the meaning of the statutes regulating jurisdiction, unless it be a corporation."

The Fourth Circuit noted that *United Mine Workers v. Coronada Coal Co., supra,* expressly said that permitting unions to be sued in the union name is merely a procedural matter, not a matter of substantive law. Sections 41 and 42 of the Organic Act of Puerto Rico, now 48 U.S.C.A. Secs. 863, 864, were pointed out as the basis of this Court's decision in *Puerto Rico v. Russell & Co., supra.* It was pointed out that the *Puerto Rico* opinion expressly held that diversity of citizenship was not involved in the decision. The Fourth Circuit correctly concluded that the *Puerto Rico* decision was not consciously intended to expand federal diversity jurisdiction. The Circuit Court concluded that 28 U.S.C. Sec. 1332 is no longer subject to a construction permitting the inclusion of unincorporated associations as citizens, and based thereon and on constitutional precedent, correctly reversed the District Court's holding that the Union is a juridical person with its principal place of business and citizenship in the State of Pennsylvania.

CONCLUSION

Bouligny is a citizen of North Carolina. The Union is not a citizen of Pennsylvania, but is an unincorporated association with members who are citizens of North Carolina. Accordingly, there is no diversity of citizenship. The decision of the United States Court of Appeals for the Fourth Circuit should be affirmed.

Respectfully submitted,

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No. 19

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

UNITED STEELWORKERS OF AMERICA, AFL-CIO
Petitioner

v.

R. H. BOULIGNY, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

REPLY BRIEF FOR PETITIONER

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In the course of its preparation for oral argument, petitioner discovered that Congress, in late 1964, amended 28 U. S. C. A. § 1332(c) in a manner which expressly recognizes that unincorporated associations may be citizens, and that their citizenship is in the State where they have their principal place of business. Pub. Law 88-439, 78 Stat. 445 (Approved, August 14, 1964).

The amendment adds the following proviso to § 1332(c) (emphasis supplied):

> "Provided further, that in any direct action against the insurer of a policy or contract of liability insurance, *whether incorporated or unincorporated,* to which ac-

> tion the insured is not joined as a party-defendant, such insurer shall be deemed a citizen of the State of which the insured is a citizen, as well as of any State by which the insurer has been incorporated and of the State where it has its principal place of business."

The amendment was adopted to eliminate the enormous burden placed on certain federal district courts by reason of the Louisiana and Wisconsin "direct action" statutes. Theretofore, in accidents between two Louisiana citizens, the plaintiff could obtain diversity jurisdiction by suing the out-of-State insurance company directly, without joining its insured. By the amendment, Congress deemed the insurer a citizen of the State of which its insured is a citizen, in addition to the other State or States of which it was already a citizen.

The amendment deals with both incorporated and unincorporated insurers. And it recognizes that, apart from the additional citizenship newly conferred, such an insurer is already a citizen of "any State by which the insurer has been incorporated and of the State where it has its principal place of business." In the case of an unincorporated insurer, of course, the amendment reflects Congress' understanding that it is already a citizen "of the State where it has its principal place of business," since there is no State of incorporation.

Congress thus has expressly confirmed that under Section 1332(a)(1), the basic diversity grant, an unincorporated association may be a citizen, and that its citizenship is in its principle place of business. This is the interpretation which we have advanced and which we believe to have been adopted by this Court in *Puerto Rico* v. *Russell*.

In view of the short time between the filing of this reply brief and the scheduled argument date, counsel for pe-

titioner telephoned counsel for respondent on Tuesday, October 19, 1965, and advised him of the substance of this reply brief.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

No. 19.—October Term, 1965.

United Steelworkers of America, AFL–CIO, Petitioner, *v.* R. H. Bouligny, Inc.	On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

[November 22, 1965.]

Mr. Justice Fortas delivered the opinion of the Court.

Respondent, a North Carolina corporation, brought this action in a North Carolina state court. It sought $200,000 in damages for defamation alleged to have occurred during the course of the United Steelworkers' campaign to unionize respondent's employees. The Steelworkers, an unincorporated labor union whose principal place of business purportedly is Pennsylvania, removed the case to a federal district court.[1] The union asserted not only federal-question jurisdiction, but that for purposes of the diversity jurisdiction it was a citizen of Pennsylvania, although some of its members were North Carolinians.

The corporation sought to have the case remanded to the state courts, contending that its complaint raised no federal questions and relying upon the generally prevailing principle that an unincorporated association's citizenship is that of each of its members. But the District Court retained jurisdiction. The District Judge

[1] 28 U. S. C. § 1441 (a) provides: "Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending."

noted "a trend to treat unincorporated associations in the same manner as corporations and to treat them as citizens of the state wherein the principal office is located." Divining "no common sense reason for treating an unincorporated national labor union differently from a corporation," he declined to follow what he styled "the poorer reasoned but more firmly established rule" of *Chapman* v. *Barney*, 129 U. S. 677.

On interlocutory appeal the Court of Appeals for the Fourth Circuit reversed and directed the case be remanded to the state courts. 336 F. 2d 160. Certiorari was granted, 379 U. S. 958, so that we may decide whether an unincorporated labor union is to be treated as a citizen for purposes of federal diversity jurisdiction, without regard to the citizenship of its members.[2] Because we believe this properly a matter for legislative consideration which cannot adequately or appropriately be dealt with by this Court, we affirm the decision of the Court of Appeals.

Article III, § 2 of the Constitution provides:

"The judicial Power shall extend . . . to Controversies . . . between Citizens of different States . . ."

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[2] Petitioner does not here challenge the Court of Appeals' finding with respect to the absence of federal-question jurisdiction. Mention of this finding is omitted from the "statement of the case" portion of petitioner's brief. Instead, petitioner expresses an intention, on remand of this case, to raise a different issue—that libel suits brought against unions for conduct arising in the course of an organizational campaign are within the exclusive jurisdiction of the National Labor Relations Board and may not be the subject of litigation, at least initially, in state or federal court. Compare *Linn* v. *United Plant Guard Workers of America, Local 114*, 337 F. 2d 68 (C. A. 6th Cir.), cert. granted, 381 U. S. 923, with *Meyer* v. *Joint Council 53, Intern'l Bhd. of Teamsters*, 416 Pa. 401, 206 A. 2d 382, petition for cert. dismissed under Rule 60, 382 U. S. —.

Congress lost no time in implementing the grant. In 1789 it provided for federal jurisdiction in suits "between a citizen of the State where the suit is brought, and a citizen of another State."[3] There shortly arose the question as to whether a corporation—a creature of state law—is to be deemed a "citizen" for purposes of the statute. This Court, through Chief Justice Marshall, initially responded in the negative, holding that a corporation was not a "citizen" and that it might sue and be sued under the diversity statute only if none of its shareholders was a co-citizen of any opposing party. *Bank of the United States* v. *Deveaux*, 5 Cranch 61. In 1844 the Court reversed itself and ruled that a corporation was to be treated as a citizen of the State which created it. *Louisville, C. & C. R. Co.* v. *Letson*, 2 How. 497. Nine years later, the Court reached the same result by a different approach. In a compromise destined to endure for over a century,[4] the Court indulged in the fiction that, although a corporation was not itself a citizen for diversity purposes, its shareholders would conclusively be presumed citizens of the incorporating State. *Marshall* v. *Baltimore & O. R. Co.*, 16 How. 314.

Congress re-entered the lists in 1875, significantly expanding diversity jurisdiction by deleting the requirement imposed in 1789 that one of the parties must be a citizen of the forum State.[5] The resulting increase in the quantity of diversity litigation, however, cooled enthusiasts of the jurisdiction, and in 1887 and 1888

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[3] 1 Stat. 73, 78.

[4] See 72 Stat. 415 (1958), 28 U. S. C. § 1332 (c), providing that: "For the purposes of this section and section 1441 of this title, a corporation shall be deemed a citizen of any State by which it has been incorporated and of the State where it has its principal place of business."

[5] 18 Stat. 470.

Congress enacted sharp curbs. It quadrupled the jurisdictional amount, confined the right of removal to nonresident defendants, reinstituted protections against jurisdiction by collusive assignment, and narrowed venue.[6]

It was in this climate that the Court in 1889 decided *Chapman* v. *Barney*, *supra*. On its own motion the Court observed that plaintiff was a joint stock company and not a corporation or natural person. It held that although plaintiff was endowed by New York with capacity to sue, it could not be considered a "citizen" for diversity purposes. 129 U. S., at 682.[7]

In recent years courts and commentators have reflected dissatisfaction with the rule of *Chapman* v. *Barney*.[8] The distinction between the "personality" and "citizen-

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[6] 24 Stat. 552, 553, as amended by 25 Stat. 433, 434. On the historical background of these changes in the diversity jurisdiction see generally, Moore and Weckstein, Diversity Jurisdiction: Past, Present, and Future, 43 Tex. L. Rev. 1 (1964); Moore and Weckstein, Corporations and Diversity of Citizenship Jurisdiction: A Supreme Court Fiction Revisited, 77 Harv. L. Rev. 1426 (1964); Hart and Wechsler, Federal Courts and the Federal System 891–943 (1953).

[7] Equally responsive to the congressional intent as manifested in 1887 and 1888 was the Court's decision in 1892 in *Shaw* v. *Quincy Mining Co.*, 145 U. S. 444, holding that in a diversity suit a corporation could only be sued in the State of incorporation, even though its principal place of business was elsewhere.

[8] See *Mason* v. *American Express Co.*, 334 F. 2d 392 (C. A. 2d Cir.), 78 Harv. L. Rev. 1661 (1965); 53 Geo. L. J. 513 (1965); 65 Col. L. Rev. 162 (1965); *American Fed. of Musicians* v. *Stein*, 213 F. 2d 679, 685–689 (C. A. 6th Cir.), cert. denied, 348 U. S. 873, suggesting that a trial court might find a union to be a citizen for diversity purposes—a suggestion rejected on remand, 183 F. Supp. 99 (D. C. M. D. Tenn.); and *Van Sant* v. *American Express Co.*, 169 F. 2d 355 (C. A. 3d Cir.); Comment, 1965 Duke L. J. 329; Note, Unions as Juridical Persons, 66 Yale L. J. 712, 742–749 (1957). Cf. *Swan* v. *First Church of Christ, Scientist, in Boston*, 225 F. 2d

ship" of corporations and that of labor unions and other unincorporated associations, it is increasingly argued, has become artificial and unreal. The mere fact that a corporation is endowed with a birth certificate is, they say, of no consequence. In truth and in fact, they point out, many voluntary associations and labor unions are indistinguishable from a corporation in terms of the reality of function and structure, and to say that the latter is a juridical person and a "citizen" and the former are not is to base a distinction upon an inadequate and irrelevant difference. They assert, with considerable merit, that it is not good judicial administration, nor is it fair, to remit a labor union or other unincorporated association to vagaries of jurisdiction determined by the citizenship of its members and to disregard the fact that unions and associations may exist and have an identity and a local habitation of their own.

The force of these arguments in relation to the diversity jurisdiction is particularized by petitioner's showing in this case. Petitioner argues that one of the purposes underlying the jurisdiction—protection of the nonresident litigant from local prejudice—is especially applicable to the modern labor union. According to the argument, when the nonresident defendant is a major union, local juries may be tempted to favor local interests at its expense. Juries may also be influenced by the fear that unionization would adversely affect the economy of the community and its customs and practices in the field of race relations. In support of these contentions, petitioner has exhibited material showing that during orga-

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745 (C. A. 9th Cir.). But see *Brocki* v. *American Express Co*, 279 F. 2d 785 (C. A. 6th Cir.), cert. denied, 364 U. S. 871.; *Underwood* v. *Maloney*, 256 F. 2d 334 (C. A. 3d Cir.), cert. denied, 358 U. S. 864; *A. H. Bull Steamship Co.* v. *NMEBA*, 250 F. 2d 332 (C. A. 2d Cir.), each of which takes a more conventional view.

nizational campaigns like that involved in this case, localities have been saturated with propaganda concerning such economic and racial fears. Extending diversity jurisdiction to unions, says petitioner, would make available the advantages of federal procedure, Article III judges less exposed to local pressures than their state court counterparts, juries selected from wider geographical areas, review in appellate courts reflecting a multistate perspective, and more effective review by this Court.

We are of the view that these arguments, however appealing, are addressed to an inappropriate forum, and that pleas for extension of the diversity jurisdiction to hitherto uncovered broad categories of litigants ought to be made to the Congress and not to the courts.

Petitioner urges that in *Puerto Rico* v. *Russell & Co.*, 288 U. S. 476, we have heretofore breached the doctrinal wall of *Chapman* v. *Barney* and, that step having been taken, there is now no necessity for enlisting the assistance of Congress. But *Russell* does not furnish the precedent which petitioner seeks. The problem which it presented was that of fitting an exotic creation of the civil law, the *sociedad en comandita*, into a federal scheme which knew it not. The Organic Act of Puerto Rico conferred jurisdiction upon the federal court if all the parties on either side of a controversy were citizens of a foreign state or "citizens of a State, Territory or District of the United States not domiciled in Puerto Rico."[*] All of the *sociedad's* members were nonresi-

[*] The federal district court in Puerto Rico had jurisdiction "of all cases cognizable in the district courts of the United States" and "of all controversies where all of the parties on either side of the controversy are citizens of a foreign State or States, or citizens of a State, Territory or District of the United States not domiciled in Puerto Rico . . . ." § 41, Organic Act of Puerto Rico of 1917,

dents of Puerto Rico, and jurisdiction lay in the federal court if they were the "parties" to the action. But this Court held that the *sociedad* itself, not its members, was the party, doing so on a basis that is of no help to petitioner. It did so because, as Justice Stone stated for the Court, "in the tradition of the civil law, as expressed in the Code of Puerto Rico," "the *sociedad* is consistently regarded as a juridical person." 288 U. S., at 480–481. Accordingly, the Court held that the *sociedad*, Russell & Co., was a citizen domiciled in Puerto Rico, within the meaning of the Organic Act, and ordered the case remanded to the insular courts. It should be noted that the effect of *Russell* was to contract jurisdiction of the federal court in Puerto Rico.[10]

If we were to accept petitioner's urgent invitation to amend diversity jurisdiction so as to accommodate its case, we would be faced with difficulties which we could not adequately resolve. Even if the record here were adequate, we might well hesitate to assume that petitioner's situation is sufficiently representative or typical to form the predicate of a general principle. We should, for example, be obliged to fashion a test for ascertaining

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39 Stat. 965 (now 48 U. S. C. § 863). See 70 Stat. 658 (1956), amending 28 U. S. C. § 1332, relating to the treatment of the Commonwealth of Puerto Rico for diversity purposes.

[10] As the Court noted in *Russell*, 288 U. S., at 482, the effect of its decision was to prevent nonresidents from organizing *sociedads* to carry on business in Puerto Rico and then "remove from the Insular Courts controversies arising under local law." The Court of Appeals for the Second Circuit in *Mason*, 334 F. 2d, at 397, n. 8, seems to assert that *Russell* had the effect of broadening the diversity jurisdiction. We do not agree. At the time *Russell* was decided, Puerto Rico was not considered a "state" for purposes of the federal diversity jurisdiction statute. Accordingly, a *sociedad*, although recognized as a citizen of Puerto Rico in *Russell*, could not avail itself of the general diversity statute.

of which State the labor union is a citizen. Extending the jurisdiction to corporations raised no such problem, for the State of incorporation was a natural candidate, its arguable irrelevance in terms of the policies underlying the jurisdiction being outweighed by its certainty of application. But even that easy and apparent solution did not dispose of the problem; in 1958 Congress thought it necessary to enact legislation providing that corporations are citizens both of the State of incorporation and of the State in which their principal place of business is located.[11] Further, in contemplating a rule which would accommodate petitioner's claim, we are acutely aware of the complications arising from the circumstance that petitioner, like other labor unions, has local as well as national organizations and that these, perhaps, should be reckoned with in connection with "citizenship" and its jurisdictional incidents.[12]

Whether unincorporated labor unions ought to be assimilated to the status of corporations for diversity purposes, how such citizenship is to be determined, and what if any related rules ought to apply, are decisions

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[11] See note 4, *supra*.

[12] The American Law Institute has proposed that for diversity purposes unincorporated associations be deemed citizens of the State in which their principal places of business are located, but that they be disabled from initiating diversity litigation in States where they maintain "local establishments." ALI, Study of Division of Jurisdiction Between State and Federal Courts, Proposed Final Draft No. 1 (1965), §§ 1301 (b)(2) and 1302 (b). Compare 29 U. S. C. § 185 (c), which provides: "For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members."

which we believe suited to the legislative and not the judicial branch, regardless of our views as to the intrinsic merits of petitioner's argument—merits stoutly attested by widespread support for the recognition of labor unions as juridical personalities.[13]

We affirm the decision below.

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[13] See, *e. g.*, *United Mine Workers* v. *Coronado Coal Co.*, 259 U. S. 344; Rule 17 (b) of the Fed. Rules Civ. Proc.; ALI, Study, *supra*; 3 Moore, Fed. Prac. ¶ 17.25 (2d ed., 1964); Note, Unions as Juridical Persons, 66 Yale L. J. 712 (1957). Cf. 78 Stat. 445 (1964), which amended 28 U. S. C. § 1332 (c) to confer citizenship upon insurers, "whether incorporated or unincorporated," involved in direct-action suits; Note, Developments in the Law—Judicial Control of Actions of Private Associations, 76 Harv. L. Rev. 983, 1080–1100 (1963).